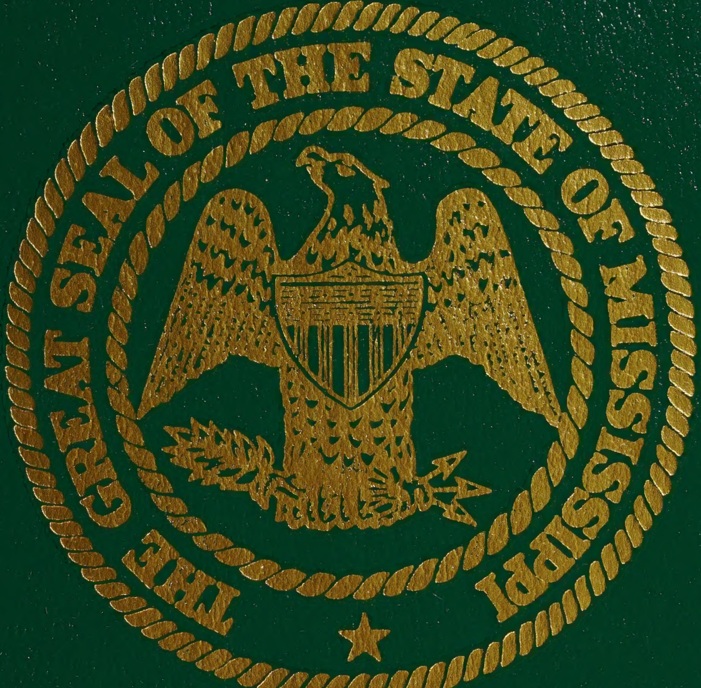

MISSISSIPPI CODE 1972
Annotated

Insurance
(83-1-1 to 83-20-7)

Title 83

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME NINETEEN

INSURANCE

§§ 83-1-1 to 83-20-7

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2011 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972. A copy of that act is set out in Volume 1, following the Publisher's Foreword.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

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PUBLISHER'S FOREWORD

This newly compiled 2011 Replacement Volume 19 of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 Volume 19, the 1991 Replacement Volume 19 and the 1999 Replacement Volume 19, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2011 Regular Session.

This volume contains the full text of Title 83, Chapters 1 through 20, of the Mississippi Code of 1972 Annotated, as amended through the 2011 Regular Legislative Session.

Case annotations are included based on decisions of the state and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals with decision dates through August 17, 2010, and decisions of the appropriate federal courts with decision dates through May 27, 2010. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PUBLISHER'S FOREWORD

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water Street, Charlottesville, VA 22906-5389.

August 2011 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Amendment Notes
— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
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— Editor's Notes
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— Index
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— Judicial Decisions
— Organization and Numbering System
— Placement of Notes
— Replacement Volumes
— Research and Practice References
— Source Notes
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading “Attorney General Opinions.” The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor. Acts affecting voting rights and procedures take effect on the date the United States Attorney General interposes no objection under § 5 of the Voting Right Act of 1965.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States.*

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note. :

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
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§ 83-1-1. Department of insurance created.

There is hereby continued a separate and distinct department of insurance, which shall be charged with the execution of all laws (except as otherwise specifically provided by statute) now in force, or which may hereafter be enacted, relative to all insurance and all insurance companies, corporations, associations, or orders.

SOURCES: Codes, 1871, § 2442; 1880, § 1073; 1892, § 2322; 1906, § 2550; Hemingway's 1917, § 5014; 1930, § 5114; 1942, § 5616; reenacted without change, Laws, 1982, ch. 366, § 1; reenacted without change, Laws, 1990, ch. 559, § 1; reenacted without change, Laws, 1996, ch. 313, § 1, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Laws of 2010, ch. 527, § 1, as amended by Laws of 2011, ch. 531, § 1, provides:

"SECTION 1. (1) There is hereby created the Health Insurance Exchange Study Committee, which shall be composed of thirteen (13) members as follows:

"(a) Two (2) members who represent insurer companies, appointed by the Governor, one (1) of which shall be a domestic insurer, and one (1) of which shall be the insurer for the Mississippi Children's Health Insurance Program (CHIP);

"(b) Two (2) health insurance underwriters named by the Mississippi Health Underwriters Association;

"(c) One (1) business owner named by the Mississippi Manufacturers Association;

"(d) One (1) licensed independent insurance agent named by the Independent Insurance Agents of Mississippi;

"(e) One (1) business owner named by the National Federation of Independent Business;

"(f) Two (2) members of the House of Representatives appointed by the Speaker of the House, one (1) of which shall be the Chairman of the House Insurance Committee;

"(g) Two (2) members of the Senate appointed by the Lieutenant Governor, one (1) of which shall be the Chairman of the Senate Insurance Committee;

"(h) One (1) member named by the Division of Medicaid; and

"(i) The Commissioner of Insurance, or his designee.

"(2) All members of the committee shall be appointed in accordance with subsection (1) and shall be so designated or appointed in sufficient time so as to allow for all members of the committee to be identified prior to the first meeting of the committee.

"(3) The first meeting of the committee shall take place no later than June 1, 2010, on the call of the Governor at a place designated by him. At the first meeting of the committee, the Chairmen of the Senate and House Insurance Committees shall act as temporary co-chairmen of the committee in order to organize and to elect a chairman and vice chairman from its membership. Following the election of the chairman and vice chairman, the committee shall adopt rules for transacting its business and keeping records. Members of the committee other than the legislative members shall receive reimbursement for travel expenses incurred while engaged in official business of the committee in accordance with Section 25-3-41, and the legislative members of the committee shall receive the compensation, except reimbursement for mileage expenses, authorized for committee meetings when the Legislature is not in session. Payment of such expenses shall be from funds made available therefor by the Legislature or from any other public or private source.

"(4) The committee shall be charged with the duty to conduct an extensive study of health insurance exchanges as proposed at the federal level. The study shall include, but not be limited to, the following issues:

"(a) The participation of insurance carriers in the exchange, the benefits offered by carriers, the rules and standards for the insurance products and the rating standards that the state will establish for the products;

"(b) The pool of eligible individuals to mitigate any selection effects on the small group market;

"(c) The review of all applicable ERISA, HIPAA and COBRA laws to ensure plans meet the requirements for rating, guarantee issue, imposition of preexisting condition exclusions and continuation of coverage, and potential liability of carriers if the exchange is negligent in applying the laws;

"(d) The role of insurance agents in the exchange, the compensation of the agents, and to ensure that all applicable state and federal laws are followed;

"(e) The necessity of duplicate costs from dual regulations of health insurance plans in the State of Mississippi;

"(f) Thorough review of other states' results and implementation of similar plans;

"(g) The ability to reduce the number of uninsured;

"(h) The effect of adverse selection;

"(i) The funding requirements and fiscal notes;

"(j) The projected fees paid by employees and employers;

"(k) The methodology used to establish the cost of the projected fees;

"(*l*) Study of other states' successes and failures;

"(m) Analysis and documentation of the uninsured population in this state, including:

"(i) High income individuals who choose not to purchase health insurance coverage;

"(ii) Those that have group insurance available but refuse to participate;

"(iii) Those that are available for government programs but are not enrolled;

"(iv) Those that are below poverty level and cannot afford insurance; and "(n) Analysis of the individuals outlined above to determine emergency room utilization and costs.

"(5) Before December 1, 2010, the committee shall make a report presenting such findings and recommendations to the Governor and to all members of the Legislature for consideration during the 2011 Regular Session.

"(6) The provisions of this section shall stand repealed from and after July 1, 2013."

Cross References — Insurance Integrity Enforcement Bureau within Attorney General's Office, see § 7-5-301 et seq.

Requirement that State Department of Insurance assist Workers' Compensation Commission in preparing report on alternative systems of workers' compensation, see § 71-3-117.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

JUDICIAL DECISIONS

1. In general.

Code 1942, chapter on insurance, §§ 5616-5834, regulating insurance companies and prescribing the duties of the commissioner of insurance in regard to the examination thereof, does not abrogate or repeal the common-law right of a stockholder in a domestic insurance corporation to inspect the books and records of the corporation. Sanders v. Neely, 197 Miss. 66, 19 So. 2d 424 (1944).

RESEARCH REFERENCES

ALR. Insured's ratification, after loss, of policy procured without his authority, knowledge, or consent. 52 A.L.R.3d 235.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 62 et seq.

Practice References. Business Insurance Law and Practice Guide, (Matthew Bender).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-1-3. Commissioner of Insurance.

The chief officer of the department shall be denominated the Commissioner of Insurance, who shall be elected at the general election as other state officers, and who shall possess the same qualifications as required for the Secretary of State. His term of office shall be four (4) years, as that of other state officials. No person shall be Commissioner of Insurance who is in any way connected with the management or control of any company, corporation, association, or order affected by this title, and his term of office shall immediately cease if at any time he shall become so interested. Before entering on the discharge of his duties, the commissioner shall take the oath of office required of state officers and give a corporate bond in favor of the state in the penal sum of Twenty-five Thousand Dollars ($25,000.00) in some company or companies duly authorized to transact business in this state, to be approved by the Governor and conditioned for the faithful performance of the duties of said office during his term, which bond and oath of office shall be filed with the Secretary of State.

SOURCES: Codes, 1906, § 2551; Hemingway's 1917, § 5015; 1930, § 5115; 1942, § 5617; reenacted without change, Laws, 1982, ch. 375, § 1; reenacted, Laws, 1990, ch. 559, § 2; reenacted without change, Laws, 1996, ch. 313, § 2, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Cross References — Constitutional provision as to qualifications of secretary of state, see MS Const Art. 5, § 133.

Constitutional provision as to oath of office, see MS Const Art. 14, § 268.

Provision that a Commissioner of Insurance shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Guaranty or surety bonds of state officials generally, see § 25-1-13.

Salaries of state officers, see § 25-3-31.

Co-operation with state department of education in study of hazard insurance on school buildings and facilities, see § 37-3-7.

Commissioner of Insurance as State Fire Marshall, see § 45-11-1.

Duties of commissioner of insurance regarding tender offers involving domestic insurance corporations, see § 75-72-105.

Registration and examination of companies writing casualty insurance, ordinary life insurance or health and accident insurance, see §§ 83-6-1 et seq.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

Mississippi Insurance Commissioner's involvement in execution of Mississippi Rural Risk Underwriting Association Law, see §§ 83-38-1 et seq.

Commissioner's responsibility with respect to nonprofit medical liability insurance corporations, see §§ 83-47-1 et seq.

Duties of commissioner with respect to legal expense insurance, see §§ 83-49-1 et seq.

JUDICIAL DECISIONS

1. In general.

Duty and responsibility of the commissioner of insurance is prescribed primarily for the protection of the policyholders and the public, and the sections relating thereto were not intended to deal with the relation existing between the insurance corporation and its stockholders, or to require the commissioner to concern himself with the internal affairs and details of operation or management. Sanders v. Neely, 197 Miss. 66, 19 So. 2d 424 (1944).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-1-4. Rules and regulations relative to certain general liability insurance policies.

The Commissioner of Insurance is hereby authorized and directed to promulgate rules and regulations necessary to establish a plan for the availability of commercial liability insurance contracts of owners', landowners' and tenants' liability policies and manufacturers' and contractors' liability policies, covering bodily injury and property damage.

The commissioner shall report on such plan to the 1987 Regular Session of the Legislature.

SOURCES: Laws, 1986, ch. 414, eff from and after passage (approved March 28, 1986).

RESEARCH REFERENCES

Practice References. Business Law Monographs, Volume IN2 — Casualty and Liability Insurance (Matthew Bender).

Am Jur. 43 Am. Jur. 2d, Insurance §§ 23-65, 667-714.

CJS. 44 C.J.S., Insurance §§ 76-143.

45 C.J.S., Insurance §§ 894-900, 1190-1209, 1337-1354, 1493-1516.

§ 83-1-5. Compensation and employees.

The commissioner shall receive a compensation to be fixed by law. He is hereby authorized to employ a clerk and stenographer and an actuary at a salary to be fixed by law; and in addition shall be allowed a sufficient sum for traveling expenses and for extra clerical help.

SOURCES: Codes, 1906, § 2553; Hemingway's 1917, § 5017; 1930, § 5116; 1942, § 5618; Laws, 1926, ch. 345; reenacted without change, Laws, 1982, ch. 375, § 2; reenacted without change, Laws, 1990, ch. 559, § 3; reenacted without change, Laws, 1996, ch. 313, § 3, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Cross References — Compensation of insurance commissioner, see § 25-3-31.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

§ 83-1-6. Repealed.

Repealed by Laws, 1990, ch 559, § 4, eff from and after July 1, 1990.
[En Laws, 1982, ch. 375, § 3]

Editor's Note — Former section 83-1-6 provided for the repeal of sections 83-1-3 and 83-1-5.

§ 83-1-7. Deputy.

The commissioner shall have authority to appoint, with the consent of the Governor, a deputy commissioner, who shall have power, during his absence or inability to act from any cause, to perform any and all of the duties of the commissioner. Said deputy shall be commissioned by the Governor and shall be subject to the same requirements, restrictions, and qualifications as the commissioner, excepting that the bond of the deputy shall be in the penal sum of Ten Thousand Dollars ($10,000.00), conditioned and approved in the same manner as the bond of the commissioner.

SOURCES: Codes, 1906, § 2552; Hemingway's 1917, § 5016; 1930, § 5117; 1942, § 5619; reenacted without change, Laws, 1982, ch. 366, § 2; reenacted, Laws, 1990, ch. 559, § 5; reenacted without change, Laws, 1996, ch. 313, § 4, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Cross References — Compensation of deputy commissioner, see § 25-3-39.1.

Appointment of department subordinates, see § 25-3-47.

Qualifications of commissioner, see § 83-1-3.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

§ 83-1-9. Offices.

Suitable offices in the Statehouse for conducting the business of said department shall be provided by the Governor, and the superintendent or keeper of the Statehouse shall, from time to time, furnish the necessary furniture, seal and stationery, fuel, lights, and other requirements, and properly care for said offices. The expense thereof shall be defrayed in the same manner as like expenses of other departments of the state government.

SOURCES: Codes, 1906, § 2557; Hemingway's 1917, § 5021; 1930, § 5118; 1942, § 5620; reenacted without change, Laws, 1982, ch. 366, § 3; reenacted, Laws, 1990, ch. 559, § 6; reenacted without change, Laws, 1996, ch. 313, § 5, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Cross References — Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

§ 83-1-11. Seal.

The Department of Insurance shall have a seal, around the margin of which shall appear the words "Commissioner of Insurance, Mississippi," with the image of an eagle in the center and thirteen (13) stars over the head of the eagle. Each certificate and other official paper executed by the commissioner under authority of law and sealed with the seal of the department shall be received as evidence in all courts, investigations, and proceedings authorized by law, and may be recorded in the same manner and with like effect as a deed. All copies of papers certified by him and authenticated by said seal shall be accepted in all matters equally and in like manner as the original.

SOURCES: Codes, 1906, § 2555; Hemingway's 1917, § 5019; 1930, § 5119; 1942, § 5621; reenacted without change, Laws, 1982, ch. 366, § 4; reenacted,

Laws, 1990, ch. 559, § 7; reenacted without change, Laws, 1996, ch. 313, § 6, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Cross References — Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

§ 83-1-13. Monthly report; payment of taxes to state treasurer.

The commissioner shall furnish to the Auditor on or before the tenth day of each month a statement, in detail, of the taxes and licenses received by him under this title during the previous month, and shall pay to the Treasurer the amount in full of such taxes and licenses. The State Tax Commission shall make payment to the State Treasurer of taxes collected by it under this title in the manner provided by Section 7-9-21.

SOURCES: Codes, 1906, § 2628; Hemingway's 1917, § 5094; 1930, § 5120; 1942, § 5622; Laws, 1982, ch. 351, § 9; reenacted without change, Laws, 1982, ch. 366, § 5; Laws, 1984, ch. 462, § 3; reenacted, Laws, 1990, ch. 559, § 8; reenacted without change, Laws, 1996, ch. 313, § 7, eff from and after June 30, 1996.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Executive Director of the Department of Finance and Administration generally, see §§ 7-7-1 et seq.

Annual reports to governor, see § 83-1-15.

Suit to recover reasonable expenses of examination of insurance company, see § 83-5-81.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

JUDICIAL DECISIONS

1. In general.

State's claim against insurance commissioner for license taxes held an account. Miller v. Henry, 139 Miss. 651, 103 So. 203 (1925).

Insurance commissioner liable for interest only on taxes collected from time settlements were due therefor. Miller v. Henry, 139 Miss. 651, 103 So. 203 (1925).

§ 83-1-15. Annual report to governor.

The commissioner shall, on or before the first day of May, annually, make a report to the governor, which shall show all of his official acts; the condition of all insurance companies within the meaning of this title, doing business in this state, accompanied by a condensation of their reports to him arranged in proper form for printing; the licenses issued by him, and the taxes received from all sources and paid by him to the treasurer; and such changes in the laws affecting his department, as in his judgment should be made. The governor shall transmit this report to the legislature. The commissioner shall see that all laws relating to matters under his supervision are faithfully executed. He shall supply each insurance company doing business in this state with all necessary printed forms.

SOURCES: Codes, 1857, ch. 35, art. 59; 1871, § 2444; 1880, § 1075; 1892, § 2325; 1906, § 2558; Hemingway's 1917, § 5022; 1930, § 5121; 1942, § 5623; reenacted without change, Laws, 1982, ch. 366, § 6; reenacted without change, Laws, 1990, ch. 559, § 9; reenacted without change, Laws, 1996, ch. 313, § 8, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Cross References — Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

JUDICIAL DECISIONS

1. In general.

The power of the insurance commissioner to approve or disapprove policy provisions is a quasi-judicial power to be exercised within his sound discretion, subject to review by the courts. White v. National Old Line Ins. Co., 203 Miss. 752, 34 So. 2d 234 (1948).

§ 83-1-17. Laws enforced by suit.

Compliance with the provisions of this title as to deposits, obligations, prohibitions, and the payment of taxes, fees, and penalties by and upon foreign insurance companies or other insurers may be enforced by the commissioner by suit in the name of the state.

SOURCES: Codes, 1906, § 2650; Hemingway's 1917, § 5116; 1930, § 5122; 1942, § 5624; reenacted without change, Laws, 1982, ch. 366, § 7; reenacted

without change, Laws, 1990, ch. 559, § 10; reenacted without change, Laws, 1996, ch. 313, § 9, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Cross References — Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

Injunctive relief for violations relating to legal expense insurance plans and appointment of receivers, see § 83-49-31.

JUDICIAL DECISIONS

1. In general.

There is no prohibition against the insurance commissioner joining with the attorney general in a bill of complaint for the enforcement of the insurance statutes. Gandy v. Reserve Life Ins. Co., 279 So. 2d 648 (Miss. 1973).

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-1-19. Group insurance for state employees.

The state insurance commissioner is hereby authorized, empowered and directed, in his discretion, to promulgate such regulations as may properly apply to the writing of group insurance on state officials and employees. Such insurance shall be optional with any one or all of said state officials or employees.

SOURCES: Codes, 1930, § 5123; 1942, § 5625; Laws, 1930, ch. 53; reenacted without change, Laws, 1982, ch. 366, § 8; reenacted without change, Laws, 1990, ch. 559, § 11; reenacted without change, Laws, 1996, ch. 313, § 10, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Cross References — Group insurance for public employees generally, see §§ 25-15-101, 25-15-103.

Use of red lights on vehicles used by firemen of volunteer fire departments which receive funds under this section, see §§ 63-7-19 and 63-7-20.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

RESEARCH REFERENCES

ALR. Group insurance: Waiver or estoppel on basis of statements in promotional or explanatory literature issued to insureds. 36 A.L.R.3d 541.

§ 83-1-21. Reports on file as public record.

The commissioner shall keep in his office for public inspection all reports received by him, a record of all his proceedings, including a concise statement of the result of official examinations, an exhibit of the financial condition and methods of all insurers under his supervision, as disclosed by their statements or by official examination, and such other information with regard to them as he may deem it proper to preserve.

Such reports or records which are no longer useful or necessary may be disposed of in accordance with approved records control schedules. No records, however, may be destroyed without the approval of the Director of the Department of Archives and History.

SOURCES: Codes, 1906, § 2560; Hemingway's 1917, § 5025; 1930, § 5124; 1942, § 5626; Laws, 1946, ch. 361, § 1; Laws, 1981, ch. 501, § 26; reenacted, Laws, 1982, ch. 366, § 9; reenacted, Laws, 1990, ch. 559, § 12; reenacted without change, Laws, 1996, ch. 313, § 11, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws, 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Cross References — Requirement that consent of director of department of archives and history be obtained prior to destruction of public records, see §§ 25-59-21, 25-59-31.

Archives and Records Management Law, generally, see §§ 25-59-21 et seq.

Confidentiality and disclosure of public records, generally, see § 25-59-27.

Annual statements by insurance companies, see § 83-5-55.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

§ 83-1-23. Examination before granting authority.

Before granting a certificate of authority to any insurance company organized under the laws of another state or government, the commissioner shall be satisfied that it is qualified to transact business under the laws of the state in which it has its principal office, and also as to its financial ability and condition.

SOURCES: Codes, 1880, § 1085; 1892, § 2327; 1906, § 2564; Hemingway's 1917, § 5029; 1930, § 5125; 1942, § 5627; reenacted without change, Laws, 1982, ch. 366, § 10; reenacted without change, Laws, 1990, ch. 559, § 13; reenacted without change, Laws, 1996, ch. 313, § 12, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Cross References — Examination of foreign insurance companies, see § 83-1-27.

Registration and examination of companies writing casualty insurance, ordinary life insurance or health and accident insurance, see §§ 83-6-1 et seq.

Statement to be filed by foreign insurance company seeking to do business within the state, see § 83-21-1.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

Examination of burial associations by insurance commissioner, see § 83-37-25.

JUDICIAL DECISIONS

1. In general.

Where a certificate of authority to transact insurance was issued to a foreign insurance company in accordance with § 83-1-23, and the certificate had been neither revoked nor suspended, such company is still authorized to transact business in Mississippi and the claim against the company arising prior to its insolvency is covered. Mississippi Ins. Guar. Ass'n v. Gandy, 289 So. 2d 677 (Miss. 1973).

Act of insurance commissioner issuing license to company is judicial and cannot be reviewed by mandamus. Cole v. State, 91 Miss. 628, 45 So. 11 (1907).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statute establishing compensation for claims not paid because of insurer's insolvency. 30 A.L.R.4th 1110.

§ 83-1-25. Repealed.

Repealed by Laws, 1997, ch. 410, § 23, eff from and after July 1, 1997.

[Codes, 1906, § 2565; Hemingway's 1917, § 5030; 1930, § 5126; 1942, § 5628; Laws, 1944, ch. 322; Laws, 1946, ch. 355, § 1; Laws, 1958, ch. 432; Laws, 1966, ch. 520, § 1; Laws, 1972, ch. 325, § 1; Laws, 1982, ch. 351, § 11; reenacted, Laws, 1982, ch. 366, § 11; Laws, 1984, ch. 462, § 4; reenacted, Laws, 1990, ch. 559, § 14; repealed, Laws, 1992, ch. 319, § 10; reenacted, Laws, 1996, ch. 313, § 13].

Editor's Note — Former § 83-1-25 authorized the Commissioner of Insurance to conduct financial examinations of domestic insurance companies.

§ 83-1-27. Examination of foreign concerns.

Whenever the Commissioner of Insurance deems it prudent for the protection of the policyholders in this state, he shall in like manner visit and examine, or cause to be visited and examined by some competent person or persons he may appoint for that purpose, any foreign insurance company applying for admission or already admitted to do business by agencies in this state, and such companies shall pay the proper charges incurred in such examination, including the expense of the commissioner or his deputy and the expenses and compensation of his assistants employed therein. For the purpose aforesaid, the commissioner or his deputy or persons making examination shall have free access to all the books and papers of the insurance company that relate to its business and to the books and papers kept by any of its agents, and may summon and qualify as witnesses, under oath, and examine the directors, officers, agents and trustees of any such company, and any other persons in relation to its affairs, transactions and conditions. Such examination shall be made by the commissioner, or by his accredited representatives, and such companies shall pay the proper charges incurred in such examination, including the expense of the commissioner or financial examiners, actuaries, market conduct examiners, accountants, attorneys or other professional service organizations necessary to administer this section. The

Department of Insurance may contract with professional service organizations to examine all companies under its jurisdiction, and the professional service organization may directly bill the company under examination. The commissioner shall monitor the charges for these professional services and verify that all costs are reasonable. If a company fails to pay these fees within thirty (30) days of billing, the commissioner, after notice and a hearing, is authorized to impose an administrative fine not to exceed One Thousand Dollars ($1,000.00) per day to be deposited into the special fund in the State Treasury designated as the "Insurance Department Fund." The compensation and expense of the commissioner or such examiner for the commissioner shall not exceed that approved by the National Association of Insurance Commissioners for all financial and market conduct examiners on such examinations, itemized account of such charges being rendered to and approved by the Commissioner of Insurance.

The results of audits performed hereunder by the Commissioner of Insurance may be furnished to the State Tax Commission. Nothing herein shall be construed to prohibit the State Tax Commission from performing such additional audits or verifications as it may deem necessary to insure the proper payment of taxes.

SOURCES: Codes, 1906, § 2566; Hemingway's 1917, § 5031; 1930, § 5127; 1942, § 5629; Laws, 1958, ch. 433; Laws, 1972, ch. 324, § 1; Laws, 1982, ch. 351, § 12, reenacted, ch. 366, § 12; Laws, 1984, ch. 462, § 5; reenacted, 1990, ch. 559, § 15; reenacted without change, Laws, 1996, ch. 313, § 14; Laws, 1997, ch. 410, § 1, eff from and after July 1, 1997.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws, 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Examination of foreign insurance company before granting authority to do business, see § 83-1-23.

Examined party's payment of costs related to review for compliance with §§ 83-2-1 et seq., effective from and after January 1, 1988, see § 83-2-25.

Fees for commissioner, see § 83-5-73.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 85.

CJS. 44 C.J.S., Insurance §§ 129, 130.

§ 83-1-29. Suspension or revocation of certificate of authority.

Whenever it shall appear to the commissioner, upon examination or other evidence, that a foreign insurance company is in an unsound condition, or upon notification by the State Tax Commission that the company is delinquent in the payment of taxes due the state, or that it has failed to comply with the law, or that it, its officers, or agents, refused to submit to examination or to perform any legal obligation in relation thereto, he shall revoke or suspend all certificates of authority granted to it or its agents, and shall cause notification thereof to be published in one or more newspapers published in this state. No new business shall thereafter be done by it or its agents in this state while such default or disability continues, nor until its authority to do business is restored by the commissioner. If, upon examination, he is of the opinion that any domestic insurance company is insolvent, or has exceeded its powers, or has failed to comply with any provision of law applicable to it, or that its condition is such as to render its further proceeding hazardous to the public or its policyholders, or upon notification by the State Tax Commission that the company is delinquent in the payment of taxes due the state, he shall suspend its license. If he deems it necessary, he shall apply to a judge of the chancery court to issue an injunction restraining it, in part or in whole from further proceeding with its business. Such judge may, in his discretion, issue the injunction forthwith or upon notice and hearing thereon and, after a full hearing of the matter, may dissolve or modify such injunction or make it permanent, may make all orders and decrees needful in the premises, and may appoint agents or receivers to take possession of the property or effects of the company and to settle its affairs, subject to such rules and orders as the court may, from time to time, prescribe according to the course of proceedings in equity.

SOURCES: Codes, 1906, § 2567; Hemingway's 1917, § 5032; 1930, § 5128; 1942, § 5630; Laws, 1982, ch. 351, § 10; reenacted without change, Laws, 1982, ch. 366, § 13; Laws, 1984, ch. 462, § 6; reenacted, Laws, 1990, ch. 559, § 16; reenacted without change, Laws, 1996, ch. 313, § 15, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws, 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Revocation of licenses, see § 83-5-17.

Revocation of license for refusal to comply with provisions of insurance law, see § 83-5-83.

Application of this section to suspension, revocation or refusal of license for failure to submit to examination by commissioner, see § 83-5-207.

Additional authority to suspend, revoke or to refuse to renew license or certificate of authority of insurer, see § 83-6-39.

Impairment of capital, see § 83-19-57.

Appointment of receiver for insolvent company, see § 83-23-1.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

JUDICIAL DECISIONS

1. In general.

Since under statutes conferring authority on insurance commissioner to act make the interest of the policyholders paramount, immediate action is justified when the policyholder's interest is endangered, and ex parte orders suspending an insurance company's certificate, temporary restraining orders, and temporary appointments ordered without notice are acceptable. State Sec. Life Ins. Co. v. State ex rel. Dale, 498 So. 2d 825 (Miss. 1986).

Where the insurance commission is of the opinion that an insurance company's insolvent condition could endanger its policyholders, he may suspend the company's license and take other appropriate measures. State Sec. Life Ins. Co. v. State ex rel. Dale, 498 So. 2d 825 (Miss. 1986).

On complaint filed by the insurance commission, following examination of an insurance company, alleging the insurance company was insolvent and its condition such as to render further business hazardous to the public and to its policyholders, chancellor did not abuse his discretion in granting a temporary restraining order prohibiting the insurance company from further business and appointing the insurance commissioner as its temporary receiver, and in compelling the insurance company and its affiliates to turn over to the insurance commissioner all documents and other records which were requested by the insurance commissioner in writing for the purpose of determining the financial condition and the legality of the conduct of the insurance company and its affiliates. State Sec. Life Ins. Co. v. State ex rel. Dale, 498 So. 2d 825 (Miss. 1986).

Section 83-1-29 provides the steps required to be taken to revoke or suspend insurance company's certificate of authority. Mississippi Ins. Guar. Ass'n v. Gandy, 289 So. 2d 677 (Miss. 1973).

Duty and responsibility of the commissioner of insurance is prescribed primarily for the protection of the policyholders and the public, and the statutory provisions relating thereto were not intended to deal with the relation existing between the insurance corporation and its stockholders, or to require the commissioner to concern himself with the internal affairs and details of operation or management. Sanders v. Neely, 197 Miss. 66, 19 So. 2d 424 (1944).

Insurance policies providing for monthly income to assured for life were annuity policies and not life insurance policies, and therefore were not void and subject to cancelation because of company's failure to comply with provisions that a policy of life insurance shall not be issued or delivered in this state until the form has been approved and filed by the insurance commissioner, notwithstanding that they also provided for payment to another of the balance, if any, of the single premium remaining after assured's death. Hamilton v. Penn Mut. Life Ins. Co., 196 Miss. 345, 17 So. 2d 278 (1944).

Annuity policies, though not life insurance policies, are such as a life insurance company is authorized to issue and therefore are subject to the provisions of the statute regulating the business of life insurance companies, and not to the requirement of the blue sky law. Hamilton v. Penn Mut. Life Ins. Co., 196 Miss. 345, 17 So. 2d 278 (1944).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statute establishing compensation for claims not paid because of insurer's insolvency. 30 A.L.R.4th 1110.

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance Form 11.1 (petition or application by insurance company against state commissioner of insurance to enjoin further proceedings to suspend or revoke insurance company's certificate of authority).

CJS. 44 C.J.S., Insurance §§ 135, 136.

§ 83-1-31. Audit of books to determine tax liability.

When, in the judgment of the Insurance Commissioner, or upon request by the State Tax Commission, an audit, examination, or inspection of the books, records, invoices, papers, memoranda, or other data appears to be required or necessary to determine the assessment of a tax, or to establish a tax liability, or to verify a payment of a tax, under the tax laws of this state, of a taxpayer doing business both within and without the state and maintaining his principal place of business outside the state, such audit, or examination, or inspection may be made at the principal place of business outside the state to the same extent and same effect as audits, examinations, or inspections are made of books, records, invoices, papers, memoranda, or other data located in this state.

The Insurance Commissioner, who is directly charged with the duty of auditing the records necessary for use by the State Tax Commission in assessing and collecting taxes under laws which require a taxpayer to keep adequate books, records, papers, invoices, memoranda, or other data at a place in this state, reflecting his liability for any tax due the state, and which taxpayer conducts his business both within and without Mississippi and maintains his principal place of business outside this state, at which his books, records, etc., are located, may elect to audit, examine, or inspect all books, records, papers, invoices, memoranda, or other data reflecting upon the Mississippi tax assessment and tax liability at the principal place of business of the taxpayer, rather than require the taxpayer to transport all of his books, records, papers, invoices, memoranda, and other data to some place in this state.

SOURCES: Codes, 1942, § 9218; Laws, 1942, ch. 126; Laws, 1982, ch. 351, § 13; reenacted without change, Laws, 1982, ch. 366, § 14; Laws, 1984, ch. 462, § 7; reenacted, Laws, 1990, ch. 559, § 17; reenacted without change, Laws, 1996, ch. 313, § 16, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Liability for cost of audit, see § 83-1-33.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

§ 83-1-33. Taxpayer liable for cost of audit.

When the insurance commissioner shall elect to audit, examine, or inspect the books, records, papers, invoices, memoranda, or other data of a taxpayer at his principal place of business outside this state, he shall designate, in writing, his agent or agents, employee or employees, to make the audit, examination, or inspection at the principal place of business of the taxpayer, and shall state the kind of tax for which the audit, examination, or inspection is thereby made.

In regard to inspection made by the commissioner of insurance the cost thereof, to include only the actual expenses involved to be determined after audit, examination, or inspection has been made, shall be paid by the taxpayer. The commissioner shall first approve the account or cost of such examination and determine to his satisfaction that it is reasonable, and that there are charged only the direct expenses involved in making the audit, examination, or inspection. He shall then pay, from the support funds authorized by the legislative act to be used by him in the administration of the duties of his office, to the agent or agents, employee or employees who made the audit, examination, or inspection, his, or their, itemized expense accounts. Then a detailed itemized statement of the expenses or cost of such audit, examination, or inspection shall be rendered the taxpayer. If such is done, the taxpayer shall be directed to pay the cost thereby set out as a refund into the treasury of the State of Mississippi to the credit of the support fund account of the officer who made the audit, examination, or inspection; and the treasurer's receipt shall be mailed to the taxpayer.

The charge for or cost of any audit, examination, or inspection of the books, records, papers, invoices, memoranda, or other data made by the commissioner of insurance at the principal place of business outside this state of any taxpayer, and made under the provisions of any of the tax laws shall become a liability of the taxpayer to the State of Mississippi, collectible in the same manner as is the tax imposed by the tax law under which the audit, examination, or inspection has been made.

SOURCES: Codes, 1942, § 9219; Laws, 1942, ch. 126; Laws, 1958, ch. 553; reenacted without change, Laws, 1982, ch. 366, § 15; reenacted without change, Laws, 1990, ch. 559, § 18; reenacted without change, Laws, 1996, ch. 313, § 17, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Cross References — Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

§ 83-1-35. Reward in case of willful destruction by fire or explosion of real or personal property within state.

The Commissioner of Insurance is hereby authorized, in his discretion, to offer a reward not to exceed One Thousand Dollars ($1,000.00) for information leading to the apprehension, indictment and conviction of any person, persons or organization of persons responsible for the willful destruction by fire or explosion of any real or personal property located within this state.

The Commissioner of Insurance is further directed to have suitable reward notices printed and posted in conspicuous places, and to utilize such other news media or informational materials as necessary to encourage those with information to come forward.

The reward monies paid, if any, as well as the cost of printing and distribution of reward notices and other news media or informational materials, shall be paid from premium taxes under Sections 27-15-103 and 27-15-109. However, the Commissioner of Insurance shall keep a separate account of all monies disbursed under the provisions of this section and shall include the same in his annual report.

SOURCES: Codes, 1942, § 5630.5; Laws, 1958, ch. 447, §§ 1-3; Laws, 1979, ch. 316; Laws, 1982, ch. 351, § 14; reenacted, Laws, 1982, ch. 366, § 16; reenacted, Laws, 1990, ch. 559, § 19; reenacted without change, Laws, 1996, ch. 313, § 18, eff from and after June 30, 1996.

Editor's Note — Laws of 1996, ch. 313, § 20, amended Laws, 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Cross References — Authority to insure school buildings, see § 37-7-303.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

§ 83-1-37. Municipal fire protection fund.

(1) The Department of Revenue shall pay for credit to a fund known as the "Municipal Fire Protection Fund," the sum of Four Million Eight Hundred Fifty Thousand Dollars ($4,850,000.00) annually out of the insurance premium tax collected annually from the taxes levied on the gross premiums on fire insurance policies written on properties in this state, under Sections 27-15-103 through 27-15-127. The State Treasurer shall credit this amount to the Municipal Fire Protection Fund. This fund shall be set aside and earmarked for payment to municipalities in this state, as hereinafter provided.

(2) Using 1990 as a base year, the Department of Revenue shall pay over annually to the State Treasurer, for credit to the "Municipal Fire Protection Fund," an amount representing one-half of ten percent (½ of 10%) of any growth after 1990 of the insurance premium tax collected annually from the taxes levied on the gross premium on fire insurance policies written on properties in this state, under Sections 27-15-103 through 27-15-127.

(3) The fund hereby created and denominated "Municipal Fire Protection Fund" shall be apportioned and paid over by the Department of Insurance to the incorporated municipalities certified as eligible to participate in the fund by the Commissioner of Insurance, and shall be distributed once each year on a population basis, to be determined by the most recent federal census, except as provided in subsection (4) of this section. Municipalities receiving these funds shall earmark such monies for fire protection services.

(4) Two Hundred Fifty Thousand Dollars ($250,000.00) from the Municipal Fire Protection Fund shall be annually designated from that fund for the training of municipal personnel as needed for the adoption of and compliance with the minimum building codes as established and promulgated by the Mississippi Building Codes Council or for windstorm mitigation programs as

approved by the Commissioner of Insurance. These monies shall be apportioned and distributed amongst qualifying municipalities. Any monies that are designated under this subsection (4) that are not expended annually shall be returned to the Municipal Fire Protection Fund to be distributed for fire protection services.

(5) The amount paid under subsections (1) and (2) of this section to a municipality shall be used and expended in accordance with the guidelines established by the Commissioner of Insurance authorized by Section 45-11-7, and for the training of municipal personnel as needed for the adoption of and compliance with the minimum building codes as established and promulgated by the Mississippi Building Codes Council, or for windstorm mitigation programs as approved by the Commissioner of Insurance.

(6) Each municipality shall levy a tax of not less than one-fourth (¼) mill on all property of the municipality or appropriate the avails of not less than one-fourth (¼) mill from the municipality's general fund for fire protection purposes. Municipalities may allow such millage to be collected by the county. Each municipality shall annually provide the Commissioner of Insurance and the State Fire Coordinator on a form provided by the State Fire Coordinator a report stating whether the municipality is levied the one-fourth (¼) mill hereby required or in lieu thereof is allowing such millage to be collected by the county.

SOURCES: Codes, 1942, § 3494.7; Laws, 1950, ch. 415, §§ 1-4; Laws, 1954, ch. 344, § 4 [¶ 4]; Laws, 1966, ch. 595, § 1; Laws, 1971, ch. 342, § 1; Laws, 1981, ch. 365, § 2; Laws, 1982, ch. 351, § 15; reenacted, Laws, 1982, ch. 366, § 17; Laws, 1984, ch. 462, § 8; Laws, 1988, ch. 584, § 8; Laws, 1990, ch. 558, § 3; reenacted and amended, Laws, 1990, ch. 559, § 20; Laws, 1994, ch. 418, § 6; Laws, 1994, ch. 577, § 2; reenacted, Laws, 1996, ch. 313, § 19; Laws, 2008, ch. 412, § 2; Laws, 2011, ch. 460, § 3, eff from and after July 1, 2011.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1996, ch. 313, § 20, amended Laws of 1990, ch. 559, § 24, to remove the language providing for the repeal of the amendment by that act effective June 30, 1996.

Amendment Notes — The 2011 amendment substituted "Department of Revenue" for "State Tax Commission" throughout; divided former (3) into present (3) and (4) and rewrote (4); redesignated former (4) and (5) as present (5) and (6); added "except as provided in subsection (4) of this section" in the next-to-last sentence of (3); and added "or for wind storm mitigation programs as approved by the Commissioner of Insurance" at the end of (5).

Cross References — Premium taxes generally, see §§ 27-15-103 et seq.

Duties and responsibilities of the commissioner of insurance and the fire service coordinator of the division of fire services development with respect to the eligibility for, distribution of, use of, and accountability for, funds distributed pursuant to this section, see § 45-11-7.

Authorization for the board of supervisors of any county and the governing body of any municipality to contribute funds directly to any fire protection district or volunteer fire department serving the county or municipality to meet any standards established by the commissioner of insurance as provided in this section, see § 83-1-39.

Mississippi Windstorm Mitigation Coordinating Council created to develop and implement comprehensive, coordinated approach for windstorm mitigation, see § 83-1-201.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

ATTORNEY GENERAL OPINIONS

Town of Tunica may contract with private nonprofit volunteer fire organization to provide fire protection services but insurance rebate funds must be expended consistent with statutory limitations. Dulaney, March 20, 1998, A.G. Op. #98-0137.

A municipality may only purchase equipment, materials, supplies or provide funds for a fire protection district pursuant to an interlocal agreement with the fire protection district. Hatcher, October 30, 1998, A.G. Op. #98-0666.

Payments to individual firefighters for responding to fires on a per call basis are not properly classified as improvements to the fire department of the municipality for purposes of the use of municipal fire protection funds pursuant to subsection (4) of this section. Breeden, March 19, 1999, A.G. Op. #99-0115.

The governing authorities of a municipality would be operating within the constraints of this section were that body to determine that the use of fire rebate funds to purchase insurance for municipally-owned firefighting equipment or fire department property was an expenditure for fire protection purposes. The municipality would not be authorized to pay the premiums on any property not owned by the municipality. Eubanks, May 14, 2005, A.G. Op. 04-0209.

Fire insurance rebate funds may properly be used for "child finder" and "special needs" decals, as well as for the provision of internet service at the fire station, so long as the internet service is used in furtherance of municipal fire protection. McWilliams, Sept. 30, 2005, A.G. Op. 05-0432.

Money raised by the volunteer fire department may be used for any lawful purpose deemed appropriate by the governing board of the non-profit volunteer fire department. Simmons, Nov. 10, 2006, A.G. Op. 06-0560.

RESEARCH REFERENCES

CJS. 44 C.J.S., Insurance §§ 118-120.

§ 83-1-39. County volunteer fire department fund; fund for insurance rebate monies not expended for fire protection purposes.

(1) The Department of Revenue shall pay over to the State Treasurer, to be credited to a fund entitled "County Volunteer Fire Department Fund," the sum of Four Million Eight Hundred Fifty Thousand Dollars ($4,850,000.00)

annually out of the insurance premium tax in addition to the amount collected by it under the provisions of Section 27-15-103 et seq. Such funds, hereinafter referred to as insurance rebate monies, are hereby earmarked for payment to the various counties of the state and shall be paid over to the counties by the Department of Insurance on the basis of the population of each county as it compares to the population of participating counties, not counting residents of any municipality. Such insurance rebate monies shall only be distributed to those counties which are in compliance with subsections (5) and (6) of this section. Of these monies, Two Hundred Fifty Thousand Dollars ($250,000.00) shall be designated for the purposes prescribed in subsection (3)(f) of this section.

(2) Using 1990 as a base year, the Department of Revenue shall pay to the State Treasurer, to be credited to the "County Volunteer Fire Department Fund," an amount representing one-half of ten percent (½ of 10%) of any growth after 1990 of the insurance premium tax collected annually from the taxes levied on the gross premium on fire insurance policies written on properties in this state, in addition to the amount collected by it under Section 27-15-103 et seq.

(3) Insurance rebate monies shall be expended by the board of supervisors for fire protection purposes of each county for the following categories:

(a) For training expenses;

(b) Purchase of equipment, purchase of fire trucks, repair and refurbishing of fire trucks and fire fighting equipment, and capital construction anywhere in the county or pledging as security for a period of not more than ten (10) years for such purchases;

(c) Purchase of insurance on county-owned fire fighting equipment;

(d) Fire protection service contracts, including, but not limited to, municipalities, legal fire protection districts, and nonprofit corporations providing or coordinating fire service in or out of the county;

(e) Appropriations to legal fire protection districts located in counties subject to all restrictions applicable to the use of insurance rebate monies; or

(f) Training of any county personnel as needed for the adoption of and compliance with the codes established and promulgated by the Mississippi Building Codes Council or for windstorm mitigation programs as approved by the Commissioner of Insurance. These monies shall be apportioned and distributed amongst qualifying counties. Any monies designated under this paragraph (f) that are not expended annually shall be returned to the County Volunteer Fire Protection Fund to be distributed for fire protection services.

(g) Any county-owned equipment or other property, at the option of the board of supervisors, may be used by any legally created fire department.

(4) Insurance rebate monies not expended in a given fiscal year for fire protection purposes shall be placed in a special fund with a written plan approved by the Commissioner of Insurance for disposition and expenditure of such monies. After the contracts for fire protection services have been approved and accepted by the board of supervisors, the monies shall be released to be expended in such manner as provided by this section.

(5) No county shall receive payments pursuant to this section after July 1, 1988, unless such county:

(a) Designates a county fire service coordinator who is responsible for seeing that standard guidelines established by the Commissioner of Insurance pursuant to Section 45-11-7(9), Mississippi Code of 1972, are followed. The county fire coordinator must demonstrate that he possesses fire-related knowledge and experience;

(b) Designates one (1) member of the sheriff's department to be the county fire investigator and, from and after July 1, 2008, requires the designated member of the sheriff's department to attend the State Fire Academy to be trained in arson investigation; however, in the event of a loss of the county fire investigator due to illness, death, resignation, discharge or other legitimate cause, notice shall be immediately given to the Commissioner of Insurance and the county may continue to receive payments on an interim basis for a period not to exceed one (1) year;

(c) Adheres to the standard guidelines established by the Commissioner of Insurance pursuant to Section 45-11-7(9); and

(d) Counties shall levy a tax of not less than one-fourth (¼) mill on all property of the county or appropriate avails of not less than one-fourth (¼) mill from the county's general fund for fire protection purposes. Municipalities making a written declaration to the county that they fund and provide their own fire services shall be exempted from this levy. This levy shall be used for fire protection purposes which include, but are not limited to, contracting with any provider of fire protection services.

(6)(a) No funds shall be paid by the county to any provider of fire protection services except in accordance with a written contract entered into in accordance with guidelines established by the Commissioner of Insurance and properly approved by the board of supervisors and Commissioner of Insurance. No county shall distribute funds to any fire service provider which has not met the reporting requirements required by the Commissioner of Insurance. At such time that a fire protection services provider, particularly a county volunteer fire department, a municipality or a fire protection district, has fulfilled the obligations of the written contract and has met the reporting requirements provided for in this subsection and the board of supervisors has received the insurance rebate monies, the board of supervisors shall disburse the appropriate amount to the fire protection services provider within a reasonable time, not to exceed six (6) weeks, from the time such requirements are met. Insurance rebate monies used for the purposes of contracting shall be expended by the fire service provider for capital construction, training expenses, purchase of fire fighting equipment, including payments on any loans made for the purpose of purchasing fire fighting equipment, and purchase of insurance for any fire equipment owned or operated by the provider.

(b) If the Commissioner of Insurance believes that a county is using the funds in a manner not consistent with subsections (5) and (6) of this section, the commissioner shall request the State Auditor to conduct an investigation pursuant to Section 7-7-211(e).

(7) The board of supervisors of any county may contribute funds directly to any provider of fire protection services serving such county. Such contributions must be used for fire protection purposes as may be reasonably established by the Commissioner of Insurance.

(8) Any municipal, county or local water association or other utility district supplying water may, upon adoption of a resolution authorizing such action, contribute free of charge to a volunteer fire department or fire protection district serving such local government, political subdivision or utility district such water as is necessary for fire fighting or training activities of such volunteer fire department or fire protection district.

(9) The board of supervisors of any county may, in its discretion, grade, gravel, shell and/or maintain real property of a county volunteer fire department, including roads or driveways thereof, as necessary for the effective and safe operation of such county volunteer fire department. Any action taken by the board of supervisors under the authority of this subsection shall be spread upon the minutes of the board of supervisors when the work is authorized.

(10) For the purpose of this section, "fire protection district" means a district organized under Section 19-5-151 et seq., or pursuant to any other code section or by any local and private act authorizing the establishment of a fire protection district, unless the context clearly requires otherwise.

SOURCES: Laws, 1973, ch. 496, § 1; Laws, 1974, ch. 408; Laws, 1975, ch. 472; Laws, 1976, ch. 442; Laws, 1982, ch. 351, § 16; reenacted, Laws, 1982, ch. 366, § 18; Laws, 1984, ch. 339; Laws, 1984, ch. 462, § 9; Laws, 1988, ch. 584, § 9; Laws, 1988, ch. 596, § 1; Laws, 1989, ch. 329, § 2; Laws, 1989, ch. 538, § 1; reenacted, Laws, 1990, ch. 559, § 21; Laws, 1991, ch. 536, § 1; Laws, 1994, ch. 418, § 7; Laws, 1994, ch. 577, § 3; Laws, 2004, ch. 522, § 1; Laws, 2007, ch. 485, § 1; Laws, 2008, ch. 412, § 3; Laws, 2011, ch. 460, § 4, eff from and after July 1, 2011.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws, 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1990, ch. 559, § 24, provided for the repeal of this section effective June 30, 1996. Subsequently, Laws of 1993, ch. 363, § 1, amended Laws of 1990, ch. 559, § 24, so as to remove the repeal provision with respect to this section.

Amendment Notes — The 2011 amendment substituted "Department of Revenue" for "State Tax Commission" throughout; in (3)(f), rewrote the first sentence; and added the last two sentences; and redesignated the former last sentence of (f) as (g).

Cross References — Rural fire truck acquisition assistance program, see §§ 17-23-1 et seq.

Authority of the board of supervisors of a county to grade, gravel, shell, and maintain real property, including roads or driveways thereof, owned by a municipal or county fire protection district, see § 19-3-73.

Authorization of county appropriations to volunteer fire departments meeting requirements of subsection (2) of this section, see § 19-5-95.

Duties and responsibilities of the commissioner of insurance and the fire service coordinator of the division of fire services development with respect to the eligibility for, distribution of, use of, and accountability for, funds distributed pursuant to this section, see § 45-11-7.

Mississippi Windstorm Mitigation Coordinating Council created to develop and implement comprehensive, coordinated approach for windstorm mitigation, see § 83-1-201.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

ATTORNEY GENERAL OPINIONS

County Board of Supervisors may, in its discretion, appropriate funds made available to county for purpose of repayment of loan made by volunteer fire department for purchase of fire fighting equipment to be used in county, provided all other requirements statute are met. Henley, Jan. 24, 1990, A.G. Op. #90-0019.

Nonprofit volunteer fire departments are not bound by state's public purchasing laws notwithstanding all or portion of funding for such organizations comes from county; however, if county elects to make authorized purchases directly for organization, it must do so in accordance with public purchasing laws. Mord, Feb. 22, 1990, A.G. Op. #90-0123.

Funds may be used to purchase or finance fire fighting equipment for use in county by qualifying volunteer organizations whether or not equipment is titled to county; as for inventory, only that fire fighting equipment titled to county must be maintained on county's inventory, all other would be inventory of volunteer fire department notwithstanding it may have been purchased in whole or part with county funds. Mord, Feb. 22, 1990, A.G. Op. #90-0123.

Arson investigator, as member of sheriff's department, is subject to direction and control of sheriff, and sheriff may authorize arson investigator to work out of fire service coordinator's office and to perform additional duties there; county may provide that arson investigator's salary be paid from general fund budget rather than from sheriff's budget. Austin, August 26, 1992, A.G. Op. #92-0636.

Single notice by municipality to county that municipality provides its own fire protection service is sufficient to exempt municipality from fire protection levy; city need not give notice every year. Mitchell, August 26, 1992, A.G. Op. #92-0657.

Miss. Code Section 83-1-39 expressly authorizes counties to expend insurance rebate monies for capital construction for fire protection purposes; furthermore, this section authorizes counties to expend proceeds of fire protection levy for contracting with any provider of fire protection services. Crawford, Mar. 31, 1993, A.G. Op. #93-0174.

Section 83-1-39 clearly does not authorize use of insurance rebate funds for liability insurance purchases; however, it does allow county to expend such funds for fire protection "service contracts"; private nonprofit fire corporations receiving funds under proper "fire protection service contracts" would not be subject to same limitations. Dale Dec. 1, 1993, A.G. Op. #93-0812.

It is not a violation of Section 83-1-39 for county to allow use for non-fire purposes of available equipment and/or supplies that were obtained with "fire insurance rebate monies" as long as funds or use are reimbursed on pro rata basis. Gildea, Jan. 12, 1994, A.G. Op. #93-0596.

Provisions of Sections 19-3-73 and 83-1-39(9) are sufficiently broad to authorize county board of supervisors to pave parking and/or driveways of volunteer or municipal fire department. Trapp, Feb. 24, 1994, A.G. Op. #94-0079.

Insurance for volunteer fire department trucks may be paid out of insurance rebate monies paid to the private nonprofit volunteer fire departments in accordance with "fire protection service contracts" and the requirements of Section 83-1-39(6). See also, Section 19-5-95. Breland, February 15, 1995, A.G. Op. #95-0020.

Under Section 83-1-39(3)(a), county employees and equipment may be used to clean up debris left from the fire department training exercise if, as found on the minutes by the board of supervisors, the house was donated on the condition that the county would remove the debris after the fire department finished with the house. Barry, May 10, 1995, A.G. Op. #95-0187.

Under Section 83-1-39(3), fire hydrants may be characterized as capital construction or improvements. As such, if the board finds on its minutes, that the placing of the dry hydrants in ponds on private property, pursuant to a proper easement, will specifically benefit the fire department in the carrying out of its duties, such expenditure is permissible. Lee, June 15, 1995, A.G. Op. #95-0316.

A municipality may only purchase equipment, materials, supplies or provide funds for a fire protection district pursuant to an interlocal agreement with the fire protection district. Hatcher, October 30, 1998, A.G. Op. #98-0666.

As fire hydrants are a form of property that may be purchased by a fire protection district under the general authority of § 19-5-177(b), a fire protection district may acquire and install fire hydrants utilizing funds obtained from sources other than funds provided under this section, and may install such fire hydrants upon the water lines of a water and sewer district pursuant to an agreement with the latter district under the Interlocal Cooperation Act. Westbrook, July 30, 1999, A.G. Op. #99-0379.

As long as the county is meeting the requirements of the statute, the county need not contract with itself to receive or expend the funds set out therein. Clements, Apr. 5, 2002, A.G. Op. #02-0108.

There is no authority for a municipality to provide free water to a volunteer fire department for fund raising activities of the volunteer fire department. Campbell, Oct. 14, 2003, A.G. Op. 03-0503.

A county may not purchase property damage insurance on equipment and/or vehicles owned by the county volunteer fire departments through the use of the county's general fund or the county volunteer fire departments fund. Creekmore, Nov. 30, 2004, A.G. Op. 04-0560.

There is no express authority for a county to directly reimburse volunteer firemen for mileage in responding to fires within the county. However, the proceeds from the fire protection service contract may be used by a county fire district to reimburse volunteer firemen for mileage in responding to fires within the county. Mills, Nov. 30, 2004, A.G. Op. 04-0564.

Responsibility of inspections for fire code compliance of commercial establishments in Hancock County is that of the county appointed Fire Coordinator/Arson Investigator. Adam, Mar. 4, 2005, A.G. Op. 05-0049.

The County Arson Investigator has complete control over the scene of a fire pursuant to the law enforcement authority granted to him by the Hancock County Board of Supervisors and Sheriff as the Arson Investigator. Adam, Mar. 4, 2005, A.G. Op. 05-0049.

Where a county, through a contract with a volunteer fire department or fire protection service, allows such a service to use a county-owned vehicle, as the vehicle is still owned by the county, the department or service could not acquire insurance for the vehicle in its name. Nowak, Mar. 25, 2005, A.G. Op. 05-0031.

While a county may not use money from general fund, nor rebate funds under Section 83-1-39, to pay volunteer firemen directly, both of these funds can be used to pay fire departments under fire protection service contracts for their services. The fire department can then, if it so chooses, use these funds to pay individual firemen for their services on a per call basis. Hudson, Dec. 27, 2005, A.G. Op. 05-0579.

Based upon the authority granted to counties in Sections 19-3-72 and 83-1-39(9), and upon counties' authority to allow fire protection districts the use of county-owned vehicles and equipment, a county board of supervisors would have the authority to remove trees from real property owned by a fire protection district in the county. White, Sept. 22, 2006, A.G. Op. 06-0433.

§ 83-1-41. Repealed.

Repealed by Laws, 1990, ch 559, § 22, eff from and after July 1, 1990.

[En Laws, 1979, ch 301, §§ 44, 45; Am Laws, 1979, ch. 357, § 21; Laws, 1982, ch. 366, § 19]

Editor's Note — Former section 83-1-41 provided for the repeal of sections 83-1-1 through 83-1-39.

§ 83-1-43. Authority of commissioner to enforce federal "Health Insurance Portability and Accountability Act of 1996."

The Commissioner of Insurance may make use of any of the powers established under the insurance laws and regulations of this state to enforce the federal "Health Insurance Portability and Accountability Act of 1996." The commissioner may establish and, from time to time, amend the rules and regulations relating to the enforcement of and compliance with the "Health Insurance Portability and Accountability Act of 1996."

SOURCES: Laws, 1997, ch. 341, § 3, eff from and after passage (approved March 17, 1997).

Federal Aspects — The Health Insurance Portbility and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, is codified in various sections of 29 USCS (see 29 USCS §§ 1181 et seq.) and 42 USCS (see §§ 1320d et seq.).

§ 83-1-45. Commissioner of Insurance to adopt rules and regulations governing disclosure of nonpublic personal information by insurance licensees.

The Commissioner of Insurance may adopt any rules and regulations necessary to implement the provisions of the Gramm-Leach-Bliley Act of 1999 (Public Law 106-102), including, but not limited to, rules and regulations governing the disclosure by insurance licensees of nonpublic personal information.

SOURCES: Laws, 2001, ch. 306, § 1, eff from and after July 1, 2001.

Federal Aspects — The provisions of the Gramm-Leach-Bliley Act of 1999 (Public Law 106-102) are codified generally at 15 USCS §§ 6701 et seq.

§ 83-1-47. Commissioner of Insurance authorized to establish nonbinding, nonadversarial alternative dispute resolution procedure for personal lines insurance claims.

The Commissioner of Insurance may make use of any of the powers established under the insurance laws and regulations of this state to establish a nonbinding, nonadversarial alternative dispute resolution procedure for the effective, fair and timely handling of personal lines insurance claims. The commissioner may establish and, from time to time, amend the rules and regulations relating to the establishment and enforcement of this section.

SOURCES: Laws, 2006, ch. 316, § 1, eff from and after passage (approved Mar. 1, 2006.)

JURISDICTION OVER HEALTH CARE PROVIDERS

Sec.	
83-1-101.	Jurisdiction of Insurance Department; exception.
83-1-103.	Proof to show jurisdiction of other body.
83-1-105.	Examination to determine solvency and organization of person or entity furnishing services.
83-1-107.	Application of provisions.
83-1-109.	Disclosure of insurance provisions.

§ 83-1-101. Jurisdiction of Insurance Department; exception.

Notwithstanding any other provision of law to the contrary, and except as provided herein, any person or other entity which provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the State Department of Insurance, unless the person or other entity shows that while providing such services it is subject to the jurisdiction of another agency of this state, any subdivisions thereof, or the federal government.

SOURCES: Laws, 1989, ch. 351, § 1, eff from and after July 1, 1989.

Cross References — Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-1-103. Proof to show jurisdiction of other body.

A person or entity may show that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, by providing to the Insurance Commissioner the appropriate certificate, license or other document issued by the other governmental agency which permits or qualifies it to provide those services.

SOURCES: Laws, 1989, ch. 351, § 2, eff from and after July 1, 1989.

Cross References — Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

§ 83-1-105. Examination to determine solvency and organization of person or entity furnishing services.

Any person or entity which is unable to show under Section 83-1-103 that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, shall submit to an examination by the Insurance Commissioner to determine the organization and solvency of the person or the entity, and to determine whether or not such person or entity complies with the applicable provisions of Sections 83-1-101 through 83-1-109 and all laws of this state.

SOURCES: Laws, 1989, ch. 351, § 3, eff from and after July 1, 1989.

Cross References — Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

§ 83-1-107. Application of provisions.

Any person or entity unable to show that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, shall be subject to all appropriate provisions of Section 83-1-101 and all laws of this state regarding the conduct of its business.

SOURCES: Laws, 1989, ch. 351, § 4, eff from and after July 1, 1989.

Cross References — Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

§ 83-1-109. Disclosure of insurance provisions.

Any production agency or administrator which advertises, sells, transacts, or administers the coverage in this state described in Section 83-1-101 and which is required to submit to an examination by the Insurance Commissioner under Section 83-1-105 shall, if said coverage is not fully insured or otherwise fully covered by an admitted life or disability insurer, nonprofit hospital service plan, or nonprofit health care plan, advise every purchaser, prospective purchaser and covered person of such lack of insurance or other coverage.

Any administrator which advertises or administers the coverage in this state described in Section 83-1-101 and which is required to submit to an examination by the Insurance Commissioner under Section 83-1-105, shall advise any production agency of the elements of the coverage, including the amount of "stop-loss" insurance in effect.

SOURCES: Laws, 1989, ch. 351, § 5, eff from and after July 1, 1989.

Cross References — Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

ADMINISTRATIVE SUPERVISION OF INSURERS BY COMMISSIONER OF INSURANCE

SEC.

83-1-151. Definitions.
83-1-153. Application of provisions.
83-1-155. Basis for administrative supervision; notice; appeals; hearings; release from supervision.
83-1-157. Confidentiality of records, etc.; exceptions.
83-1-159. Administrative supervisor; prohibited activities of insurer.
83-1-161. Right of insurer to contest action taken or proposed to be taken by supervisor; appeals.
83-1-163. Right of commissioner to initiate judicial proceedings, liquidation proceedings, or other delinquency proceedings.
83-1-165. Adoption of rules by commissioner.
83-1-167. Right of commissioner to meet with supervisor, or his representative, without presence of any other person.
83-1-169. Immunity from liability.

§ 83-1-151. Definitions.

As used in Sections 83-1-151 through 83-1-169, the following items shall have the meanings ascribed herein unless the context indicates otherwise:

(a) "Insurer" means and includes every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or of annuities as limited to:

(i) Any insurer who is doing an insurer business, or has transacted insurance in this state, and against whom claims arising from that transaction may exist now or in the future.

(ii) Any fraternal benefit society or larger fraternal benefit society or larger fraternal benefit society which is subject to the provisions of Section 83-29-1 et seq. or Section 83-30-1 et seq.

(iii) All corporate bodies organized for the purpose of carrying on the business of mutual insurance subject to the provisions of Section 83-31-1 et seq.

(iv) All health maintenance organizations established under Section 41-7-401.

(b) "Exceeded its powers" means the following conditions:

(i) The insurer has refused to permit examination of its books, papers, accounts, records or affairs by the commissioner, his deputies, employees or duly commissioned examiners;

(ii) A domestic insurer has unlawfully removed from this state books, papers, accounts or records necessary for an examination of the insurer;

(iii) The insurer has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto;

(iv) The insurer has neglected or refused to comply with an order of the commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock or surplus;

(v) The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the commissioner;

(vi) The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the commissioner or has without first having obtained written approval of the commissioner if approval is required by law:

(A) Totally reinsured its entire outstanding business, or

(B) Merged or consolidated substantially its entire property or business with another insurer;

(vii) The insurer engaged in any transaction in which it is not authorized to engage under the laws of this state;

(viii) The insurer refused to comply with a lawful order of the commissioner.

(c) "Consent" means agreement to administrative supervision by the insurer.

(d) "Commissioner" means the Commissioner of Insurance.

(e) "Department" means the Department of Insurance.

SOURCES: Laws, 1991, ch. 377, § 1; Laws, 1994, ch. 422, § 1; Laws, 1997, ch. 307, § 3; Laws, 2004, ch. 343, § 1, eff from and after July 1, 2004.

Editor's Note — Section 41-7-401 referred to in (a) (iv) was repealed by Laws, 1995, ch. 613, § 35, eff from and after July 1, 1995. For similar provisions, see §§ 83-41-301 et seq.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-1-153. Application of provisions.

The provisions of Sections 83-1-151 through 83-1-169 shall apply to:

(a) All domestic insurers, and

(b) Any other insurer doing business in this state whose state of domicile has asked the commissioner to apply the provisions of Sections 83-1-151 through 83-1-169 to such insurer.

SOURCES: Laws, 1991, ch. 377, § 2, eff from and after July 1, 1991.

§ 83-1-155. Basis for administrative supervision; notice; appeals; hearings; release from supervision.

(1) An insurer may be subject to administrative supervision by the commissioner if upon examination or at any other time it appears in the commissioner's discretion that:

(a) The insurer's condition renders the continuance of its business hazardous to the public or to its insureds;

(b) The insurer has exceeded its powers granted under its certificate of authority and applicable law;

(c) The insurer has failed to comply with the applicable provisions of the insurance code;

(d) The business of the insurer is being conducted fraudulently; or

(e) The insurer gives its consent.

(2) If the commissioner determines that the conditions set forth in subsection (1) of this section exist, the commissioner shall:

(a) Notify the insurer of such determination;

(b) Furnish to the insurer a written list of the requirements to abate this determination; and

(c) Notify the insurer that it is under the supervision of the commissioner and that the commissioner is applying and effectuating the provisions of Sections 83-1-151 through 83-1-169. Such action by the commissioner may be appealed to the Chancery Court of the First Judicial District of Hinds County.

(3) If placed under administrative supervision, the insurer shall have sixty (60) days, or another period of time as designated by the commissioner, to comply with the requirements of the commissioner subject to the provisions of Sections 83-1-151 through 83-1-169.

(4) If it is determined after notice and hearing that the conditions giving rise to the supervision still exist at the end of the supervision period specified above, the commissioner may extend such period.

(5) If it is determined that none of the conditions giving rise to the supervision exist, the commissioner shall release the insurer from supervision.

SOURCES: Laws, 1991, ch. 377, § 3, eff from and after July 1, 1991.

Cross References — Administrative supervisor, see § 83-1-159.
Prohibited activities during administrative supervision, see § 83-1-159.

§ 83-1-157. Confidentiality of records, etc.; exceptions.

(1) The proceedings, hearings, notices, correspondence, reports, records and other information in the possession of the commissioner or the department relating to the supervision of any insurer are confidential except as provided by this section.

(2) The personnel of the department shall have access to these proceedings, hearings, notices, correspondence, reports, records or information as permitted by the commissioner.

(3) The commissioner may open the proceedings or hearings or disclose the notices, correspondence, reports, records or information to a department, agency or instrumentality of this or another state or the United States if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States.

(4) The commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records or other information if the commissioner deems that it is in the best interest of the public or in the best interest of the insurer, its insureds, creditors or the general public.

(5) This section does not apply to hearings, notices, correspondence, reports, records or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

SOURCES: Laws, 1991, ch. 377, § 4, eff from and after July 1, 1991.

§ 83-1-159. Administrative supervisor; prohibited activities of insurer.

During the period of supervision, the commissioner or his designated appointee shall serve as the administrative supervisor. The commissioner may provide that the insurer may not do any of the following things during the period of supervision, without the prior approval of the commissioner or his appointed supervisor:

(a) Dispose of, convey or encumber any of its assets or its business in force;

(b) Withdraw any of its bank accounts;

(c) Lend any of its funds;

(d) Invest any of its funds;

(e) Transfer any of its property;

(f) Incur any debt, obligation or liability;

(g) Merge or consolidate with another company;

(h) Approve new premiums or renew any policies;

(i) Enter into any new reinsurance contract or treaty;

(j) Terminate, surrender, forfeit, convert or lapse any insurance policy, certificate or contract, except for nonpayment of premiums due;

(k) Release, pay or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate or contract;

(*l*) Make any material change in management; or

(m) Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends or other payments deemed preferential.

SOURCES: Laws, 1991, ch. 377, § 5, eff from and after July 1, 1991.

Cross References — Basis for administrative supervision, see § 83-1-155.

RESEARCH REFERENCES

ALR. What constitutes waiver by insured or insured's agent of required notice of cancellation of insurance policy. 86 A.L.R.4th 886.

§ 83-1-161. Right of insurer to contest action taken or proposed to be taken by supervisor; appeals.

During the period of supervision the insurer may contest an action taken or proposed to be taken by the supervisor specifying the manner wherein the action being complained of would not result in improving the condition of the insurer. Denial of the insurer's request upon reconsideration entitles the insurer to appeal to the Chancery Court of the First Judicial District of Hinds County.

SOURCES: Laws, 1991, ch. 377, § 6, eff from and after July 1, 1991.

§ 83-1-163. Right of commissioner to initiate judicial proceedings, liquidation proceedings, or other delinquency proceedings.

Nothing contained in Sections 83-1-151 through 83-1-169 shall preclude the commissioner from initiating judicial proceedings to place an insurer in conservation, rehabilitation or liquidation proceedings or other delinquency proceedings, however designated under the laws of this state, regardless of whether the commissioner has previously initiated administrative supervision proceedings under Sections 83-1-151 through 83-1-169 against the insurer.

SOURCES: Laws, 1991, ch. 377, § 7, eff from and after July 1, 1991.

§ 83-1-165. Adoption of rules by commissioner.

The commissioner is empowered to adopt reasonable rules necessary for the implementation of Sections 83-1-151 through 83-1-169.

SOURCES: Laws, 1991, ch. 377, § 8, eff from and after July 1, 1991.

§ 83-1-167. Right of commissioner to meet with supervisor, or his representative, without presence of any other person.

The commissioner may meet with a supervisor appointed under Sections 83-1-151 through 83-1-169 and with the attorney or other representative of the supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of Sections 83-1-151 through 83-1-169 to carry out the commissioner's duties under Sections 83-1-151 through 83-1-169 or for the supervisor to carry out his duties under Sections 83-1-151 through 83-1-169.

SOURCES: Laws, 1991, ch. 377, § 9, eff from and after July 1, 1991.

§ 83-1-169. Immunity from liability.

There shall be no liability on the part of, and no cause of action of any nature shall arise against, the commissioner or the department or its employees or agents for any action taken by them in the performance of their powers and duties under Sections 83-1-151 through 83-1-169.

SOURCES: Laws, 1991, ch. 377, § 10, eff from and after July 1, 1991.

COMPREHENSIVE HURRICANE DAMAGE MITIGATION PROGRAM

SEC.
83-1-191. Comprehensive hurricane damage mitigation program established; cost-benefit study on wind hazard mitigation construction measures; inspections; financial grants for residential retrofits; public education; advisory council; rules and regulations [Repealed effective July 1, 2012].

§ 83-1-191. Comprehensive hurricane damage mitigation program established; cost-benefit study on wind hazard mitigation construction measures; inspections; financial grants for residential retrofits; public education; advisory council; rules and regulations [Repealed effective July 1, 2012].

(1) There is established within the Department of Insurance a Comprehensive Hurricane Damage Mitigation Program. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of residential property or commercial property in this state. Implementation of this program is subject to the availability of funds that may be appropriated by the Legislature for this purpose. The program may develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that may include the following:

(a) **Cost-benefit study on wind hazard mitigation construction measures.** — The performance of a cost-benefit study to establish the most appropriate wind hazard mitigation construction measures for both new construction and the retrofitting of existing construction for both residential and commercial facilities within the wind-borne debris regions of Mississippi as defined by the International Building Code. The recommended wind construction techniques shall be based on both the newly adopted Mississippi building code sections for wind load design and the wind-borne debris region. The list of construction measures to be considered for evaluation in the cost-benefit study shall be based on scientifically established and sound, but common, construction techniques that go above and beyond the basic recommendations in the adopted building codes. This allows residents to utilize multiple options that will further reduce risk and loss and still be awarded for their endeavors with appropriate wind insurance discounts. It is recommended that existing accepted scientific studies that validate the wind hazard construction techniques benefits and effects be taken into consideration when establishing the list of construction techniques that homeowners and business owners can employ. This will ensure that only established construction measures that have been studied and modeled as successful mitigation measures will be considered to reduce the chance of including risky or unsound data that will cost both the property owner and state unnecessary losses. The cost-benefit study shall be based on actual construction cost data collected for several types of residential construction and commercial construction materials, building techniques and designs that are common to the region. The study shall provide as much information as possible that will enhance the data and options provided to the public, so that homeowners and business owners can make informed and educated decisions as to their level of involvement. Based on the construction data, modeling shall be performed on a variety of residential and commercial designs, so that a broad enough representative spectrum of data can be obtained. The data from the study will be utilized in a report to establish tables reflecting actuarially appropriate levels of wind insurance discounts (in percentages) for each mitigation construction technique/combination of techniques. This report will be utilized as a guide for the Department of Insurance and the insurance industry for developing actuarially appropriate discounts, credits or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. Additional data that will enhance the program, such as studies to reflect property value increases for retrofitting or building to the established wind hazard mitigation construction techniques and cost comparison data collected to establish the value of this program against the investment required to include the mitigation measures, also may be provided.

(b) **Wind certification and hurricane mitigation inspections.** —

(i) Home-retrofit inspections of site-built, residential property, including single-family, two-family, three-family or four-family residential units, and a set of representative commercial facilities may be offered to determine what mitigation measures are needed and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. A state program may be established within the Department of Insurance to provide homeowners and business owners wind certification and hurricane mitigation inspections. The inspections provided to homeowners and business owners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies corrective actions a homeowner may take to mitigate hurricane damage.

2. A range of cost estimates regarding the mitigation features.

3. Insurer-specific information regarding premium discounts correlated to recommended mitigation features identified by the inspection.

4. A hurricane resistance rating scale specifying the home's current as well as projected wind resistance capabilities.

This data may be provided by trained and certified inspectors in standardized reporting formats and forms to ensure all data collected during inspections is equivalent in style and content that allows construction data, estimates and discount information to be easily assimilated into a database. Data pertaining to the number of inspections and inspection reports may be stored in a state database for evaluation of the program's success and review of state goals in reducing wind hazard loss in the state.

(ii) To qualify for selection by the department as a provider of wind certification and hurricane mitigation inspections services, the entity shall, at a minimum, and on a form and in the manner prescribed by the commissioner:

1. Use wind certification and hurricane mitigation inspectors who:

a. Have prior experience in residential and/or commercial construction or inspection and have received specialized training in hurricane mitigation procedures through the state certified program. In order to qualify for training in the inspection process, the individual should be either a licensed building code official, a licensed contractor or inspector in the State of Mississippi, or a civil engineer.

b. Have undergone drug testing and background checks.

c. Have been certified through a state mandated training program, in a manner satisfactory to the department, to conduct the inspections.

d. Have not been convicted of a felony crime of violence or of a sexual offense; have not received a first-time offender pardon or nonadjudication order for a felony crime of violence or of a sexual offense; or have not entered a plea of guilty or nolo contendere to a felony charge of violence or of a sexual offense.

e. Submit a statement authorizing the Commissioner of Insurance to order fingerprint analysis or any other analysis or documents deemed necessary by the commissioner for the purpose of verifying the criminal history of the individual. The commissioner shall have the authority to conduct criminal history verification on a local, state or national level, and shall have the authority to require the individual to pay for the costs of such criminal history verification.

2. Provide a quality assurance program including a reinspection component.

3. Have data collection equipment and computer systems, so that data can be submitted electronically to the state's database of inspection reports, insurance certificates, and other industry information related to this program. It is mandatory that all inspectors provide original copies to the property owner of any inspection reports, estimates, etc., pertaining to the inspection and keep a copy of all inspection materials on hand for state audits.

(c) **Financial grants to retrofit properties.** — Financial grants may be used to encourage single-family, site-built, owner-occupied, residential property owners or commercial property owners to retrofit their properties to make them less vulnerable to hurricane damage.

(d) **Education and consumer awareness.** — Multimedia public education, awareness and advertising efforts designed to specifically address mitigation techniques may be employed, as well as a component to support ongoing consumer resources and referral services. In addition, all insurance companies shall provide notification to their clients regarding the availability of this program, participation details, and directions to the state Web site promoting the program, along with appropriate contact phone numbers to the state agency administrating the program. The notification to the clients must be sent by the insurance company within thirty (30) days after filing their insurance discount schedules with the Department of Insurance.

(e) **Advisory council.** — There is created an advisory council to provide advice and assistance to the program administrator with regard to his or her administration of the program. The advisory council shall consist of:

(i) An agent, selected by the Independent Insurance Agents of Mississippi.

(ii) Two (2) representatives of residential property insurers, selected by the Department of Insurance.

(iii) One (1) representative of homebuilders, selected by the Home Builders Association of Mississippi.

(iv) The Chairman of the House Insurance Committee, or his designee.

(v) The Chairman of the Senate Insurance Committee, or his designee.

(vi) The Executive Director of the Mississippi Windstorm Underwriting Association, or his designee.

(vii) The Director of the Mississippi Emergency Management Agency, or his designee.

Members appointed under subparagraphs (i) and (ii) shall serve at the pleasure of the Department of Insurance. All other members shall serve as voting ex officio members. Members of the advisory council who are not legislators, state officials or state employees shall be compensated at the per diem rate authorized by Section 25-3-69, and shall be reimbursed in accordance with Section 25-3-41, for mileage and actual expenses incurred in the performance of their duties. Legislative members of the advisory council shall be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session; however, no per diem or expense for attending meetings of the advisory council may be paid while the Legislature is in session. No advisory council member may incur per diem, travel or other expenses unless previously authorized by vote, at a meeting of the council, which action shall be recorded in the official minutes of the meeting. Nonlegislative members shall be paid from any funds made available to the advisory council for that purpose.

(f) **Rules and regulations.** — The Department of Insurance may adopt rules and regulations governing the Comprehensive Hurricane Damage Mitigation Program. The department also may adopt rules and regulations establishing priorities for grants provided under this section based on objective criteria that gives priority to reducing the state's probable maximum loss from hurricanes. However, pursuant to this overall goal, the department may further establish priorities based on the insured value of the dwelling, whether or not the dwelling is insured by the Mississippi Windstorm Underwriting Association and whether or not the area under consideration has sufficient resources and the ability to perform the retrofitting required.

(2) Nothing in this section shall prohibit the Department of Insurance from entering into an agreement with any other appropriate state agency to assist with or perform any of the duties set forth hereunder.

(3) This section shall stand repealed from and after July 1, 2012.

SOURCES: Laws, 2007, ch. 524, § 4; Laws, 2009, ch. 537, § 1; Laws, 2010, ch. 313, § 1, eff from and after passage (approved Mar. 9, 2010.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the seventh sentence of subsection (1)(a) by substituting "cost data collected for several" for "cost date collected for both several." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Amendment Notes — The 2009 amendment, in (1)(b)(ii), added "and on a form...commissioner" at the end of the introductory language, and added d. and e.; rewrote (1)(e); and extended the date of the repealer for the section by substituting "July 1, 2012" for "July 1, 2009."

The 2010 amendment, in the introductory paragraph in (1), in the last sentence, twice substituted "may" for "shall"; in the last sentence of (1)(a), substituted "also may be provided" for "also shall be provided"; in the introductory paragraph in (1)(b)(i), in the first sentence, substituted "may be offered" for "shall be offered," and in the second sentence, substituted "may be established" for "will be established"; in the last paragraph in (1)(b)(i), in the first sentence, substituted "may be provided" for "shall be provided" and deleted "regardless of the insurer involved with the property owner" following "formats and forms," deleted the former second sentence, which read: "It also ensures consistency of the program information for the consumers when dealing with more than one (1) insurance company for the comparison of services or when changing policies" and in the last sentence, substituted "inspections and inspection reports may be stored" for "inspections, inspection reports and consumers participating in the program shall be stored"; made a stylistic change in (1)(b)(ii)1.d.; in the first sentence in (1)(d), substituted "may be employed" for "shall be employed"; in (1)(f), twice substituted "may adopt" for "shall adopt"; and added present (2) and redesignated former (2) as (3).

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

MISSISSIPPI WINDSTORM MITIGATION COORDINATING COUNCIL

SEC.
83-1-201. Creation; purpose; composition; meetings; Mississippi Building Codes Council to serve as advisory council; Mississippi Windstorm Mitigation Fund.

§ 83-1-201. Creation; purpose; composition; meetings; Mississippi Building Codes Council to serve as advisory council; Mississippi Windstorm Mitigation Fund.

(1) There is created the Mississippi Windstorm Mitigation Coordinating Council for the purpose of developing and implementing a comprehensive and coordinated approach for windstorm mitigation. The council shall consist of the following:

(a) The Commissioner of Insurance, or his designee, to serve ex officio;

(b) The Chairman of the Board of Directors of the Mississippi Insurance Windstorm Underwriting Association, or his designee, to serve ex officio;

(c) Two (2) members who are property and casualty insurance providers appointed by the Governor, to serve at his will and pleasure;

(d) Two (2) members who are insurance producers from the Coast Area, as defined under Section 83-34-1, appointed by the Commissioner of Insurance, to serve at his will and pleasure;

(e) One (1) member from the Home Builders Association of Mississippi or the State Board of Contractors appointed by the Commissioner of Insurance, to serve at his will and pleasure;

(f) One (1) nonvoting member from the Institute for Business and Home Safety appointed by the Governor, to serve at his will and pleasure;

(g) One (1) member who is a representative of the state institutions of higher learning appointed by the Commissioner of Higher Education to serve at his will and pleasure, nonvoting;

(h) The Director of the Mississippi State Rating Bureau, or his designee, to serve ex officio, nonvoting; and

(i) The Chief Deputy State Fire Marshal, or his designee, to serve ex officio, nonvoting.

(2) The Commissioner of Insurance shall convene the first meeting of the council within ninety (90) days of July 1, 2011, and shall act as temporary chairman until the council elects from its members a chairman and vice chairman. The council shall adopt regulations consistent with this section, subject to the approval of the Commissioner of Insurance. The council may also consider the mitigation measures and initiatives referenced under Section 83-1-191 in developing and implementing a windstorm mitigation program. A meeting may be called by the chairman on his own initiative and must be called by him at the request of three (3) or more members of the council. Each member must be notified by the chairman in writing of the time and place of the meeting at least seven (7) days before the meeting. Four (4) voting members constitute a quorum. Each meeting is open to the public. An official decision of the council may be made only by a vote of a majority of those voting members in attendance at the meeting.

(3) The Mississippi Building Codes Council created under Section 17-2-3 shall serve as an advisory council to the council created under this section.

(4)(a) There is created in the State Treasury a special fund to be designated as the "Mississippi Windstorm Mitigation Fund." The fund shall consist of monies appropriated by act of the Legislature and monies from any other public or private source designated for deposit into the fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund.

(b) Monies in the special fund may be used by the Department of Insurance, upon appropriation by the Legislature, only for the purposes of assisting the Mississippi Windstorm Mitigation Coordinating Council in developing and implementing a comprehensive and coordinated approach for windstorm mitigation including providing grants, developing education programs, providing funds for training local officials or providing any other assistance consistent with these purposes.

SOURCES: Laws, 2011, ch. 460, § 1, eff from and after July 1, 2011.

CHAPTER 2

Competitive Rating for Property and Casualty Insurance

Sec.
83-2-1. Applicability of chapter and types of insurance excepted; definitions.
83-2-3. Standards applicable to rates; criteria for determining compliance.
83-2-5. Filing of rates and related information by residual market mechanisms.
83-2-7. Filing of rates and related information by insurers; exceptions; effective date of rate adjustment filing.
83-2-9. Public inspection of filed rates and related information; rates exceeding those filed; filing by rate service organization; filing by reference.
83-2-11. Disapproval of rates by commissioner and related procedure; interim rates in absence of legally effective rates.
83-2-13. Furnishing rate information to insureds; hearing of complaints as to application of rating system; appeals.
83-2-15. Rating bureau as exclusive provider of services relating to rates; licensing of and services provided by rate service organization.
83-2-17. Advisory organizations; registration; unfair practices.
83-2-19. Repealed.
83-2-21. Prohibition of insurer agreements as to adherence to or use of rates and related information; exception for insurers under common ownership or management.
83-2-23. Cooperation among insurers participating in joint underwriting, pools, residual market mechanisms; registration with and review by commissioner; unfair practices.
83-2-25. Compliance review; related reports and records.
83-2-27. Payment of dividends, savings or unabsorbed premium deposits to insureds.
83-2-29. Penalties; procedures for license suspension.
83-2-31. Appeals; rates charged pending disposition of appeal.
83-2-33. Property and casualty insurance companies to contribute to Insurance Department Fund.
83-2-35. Payment of fee by property and casualty insurers; deposit of fee into Insurance Department Fund.

§ 83-2-1. Applicability of chapter and types of insurance excepted; definitions.

(1) This chapter applies to all forms of property and casualty insurance on risks or operations in this state by any insurer authorized to do business in this state, except:

(a) Accident and health;
(b) Ocean marine insurance;
(c) Reinsurance;
(d) Aircraft liability and aircraft hull insurance;
(e) Title insurance;
(f) Credit accident and health insurance.

(2) As used in this chapter:

(a) "Advisory organization" means any person or organization, other than a rate service organization, which assists insurers as authorized by § 83-2-9(3).

(b) "Joint underwriting" means a voluntary arrangement established on an ad hoc basis to provide insurance coverage for a risk pursuant to which two (2) or more insurers separately contract with the insured at a price and under policy terms agreed upon between the insurers.

(c) "Pool" means a voluntary arrangement other than a residual market mechanism, established on an ongoing basis, pursuant to which two (2) or more insurers participate in the sharing of risks on a predetermined basis. The pool may operate through an association, syndicate or other pooling agreement.

(d) "Rate service organization" means any person or organization which assists insurers in ratemaking or filing as authorized by § 83-2-9.

(e) The terms "rate service organization" and "advisory organization" do not include joint underwriting organizations, actuarial, legal or other consultants, a single insurer, any employees of an insurer, or insurers under common control or management or their employees or managers.

(f) "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.

(g) "Supplementary rate information" includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, and any other similar information needed to determine the applicable rate in effect or to be in effect.

(h) "Supporting information" means (i) the experience and judgment of the filer and the experience or data of other insurers or organizations relied upon by the filer, (ii) the interpretation of any statistical data relied upon by the filer, (iii) a description of methods used in making the rates, and (iv) other similar information relied upon by the filer.

SOURCES: Laws, 1987, ch. 422, § 2, eff from and after January 1, 1988.

Cross References — Provisions of Insurance Code relating to organization and operation of Insurance Commission and Rating Bureau, and effective until December 31, 1987, see §§ 83-3-21 through 83-3-24.

Federal Aspects — Regulation and taxation of business of insurance by states, 15 USCS §§ 1011, 1012.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former § 83-3-101.
7. Under former § 83-3-103.
8. Under former § 83-3-117.

1.-5. [Reserved for future use.]

6. Under former § 83-3-101.

The Casualty Rating Law of 1946 does not operate to amend or repeal pro tanto the Fire Rating Law of 1924, but both must be construed together so as to reconcile and give full effect to all provisions in both where reasonably possible. Insurance Co. of N. Am. v. Insurance Comm'n, 237 Miss. 759, 116 So. 2d 224 (1959).

7. Under former § 83-3-103.

The provision that if any kind of insurance subject to the act is also subject to regulation by another rate act, an insurer to which both acts are otherwise applicable shall designate which shall be applied, does not entitle an insurer to file with the commission a policy giving both fire and casualty coverage under a single indivisible premium, where fire insurance rates are subject to statutory control. Insurance Co. of N. Am. v. Insurance Comm'n, 237 Miss. 759, 116 So. 2d 224 (1959).

8. Under former § 83-3-117.

Under its general power to make necessary rules and regulations for the administration of the Fire Rating Law and the Casualty Insurance Law, the commission has the authority to approve or disapprove the form of insurance policies. Mississippi Ins. Comm'n v. Mississippi State Rating Bureau, 220 So. 2d 328 (Miss. 1969).

It is evident from the wording of Code 1942, §§ 5816 and 5834-07(b) that the legislature intended that the insurance commission should have ample power to administer effectively the statutes controlling fire and casualty insurance. Mississippi Ins. Comm'n v. Mississippi State Rating Bureau, 220 So. 2d 328 (Miss. 1969).

RESEARCH REFERENCES

ALR. What constitutes "vacant land" within meaning of liability or property insurance policy provisions. 47 A.L.R.5th 535.

Am Jur. 43 Am. Jur. 2d, Insurance § 69.

Grant, Summary of Mississippi Law § 1812.

Lawyers' Edition. Validity, construction, and application of McCarran-Ferguson Act (15 USCS §§ 1011-1015), dealing with regulation of insurance business by state or federal law. 21 L. Ed. 2d 938.

Practice References. Business Insurance Law and Practice Guide, (Matthew Bender).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-2-3. Standards applicable to rates; criteria for determining compliance.

(1) Rates shall comply with the following standards:

(a) Rates shall not be excessive, inadequate or unfairly discriminatory.

(b) A rate is excessive if it is likely to produce a profit that is unreasonably high for the insurance provided or if the expense provision included therein is unreasonably high in relation to the services rendered.

(c) A rate is inadequate if it threatens the solvency of the insurance company or tends to create a monopoly.

(d) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with like loss exposures with different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy.

(2) In determining whether rates comply with the standards set forth in subsection (1), the following criteria shall apply:

(a) Due consideration shall be given to past and prospective loss and expense experience within and outside this state; to catastrophe hazards; to any residual market loss redistributions and other similar obligations; to a reasonable provision for profit and contingencies; to trends within and outside this state; to loadings for leveling premium rates over a reasonable period of time or for dividends or savings to be allowed or returned by insurers to their policyholders, members or subscribers; and to all other relevant factors, including the judgment of the filer.

(b) Risks may be classified in any reasonable way for the establishment of rates except that no risks may be grouped by classifications based in whole or in part on race, color, creed, or national origin of the risk. Rates may be modified for individual risks in accordance with rating plans or schedules which provide for recognition of probable variations in hazards, expenses or both.

(c) The systems of expense provisions included in rates for use by an insurer or group of insurers may differ from those of other insurers or group of insurers to reflect the operating methods of such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(d) Any homeowners' insurance policy filed with the Commissioner of Insurance that offers a percentage deductible for the peril of windstorm from a named storm shall offer a buy-back provision for that deductible which is actuarially sound; however, the Commissioner of Insurance may grant a waiver from the mandatory buy-back provision in accordance with the following procedure and criteria:

(i) An insurance company shall make a formal filing requesting a waiver from the buy-back provision requirement with the Commissioner of Insurance.

(ii) An insurance company shall submit written proof in its formal filing as to why it is in the best interest of Mississippi policyholders to receive a waiver from the buy-back provision requirement and shall provide any supporting documentation requested by the commissioner deemed appropriate to make his decision.

(iii) All expenses incurred by the Commissioner of Insurance or his designee in determining the validity of the waiver request shall be borne by the petitioning insurer. Such expenses may include, but not be limited to, the cost of reviewing the filing by actuaries, and if the commissioner deems a public hearing appropriate, the cost of a facility, the cost of publicity and the cost of a court reporter for the hearing.

SOURCES: Laws, 1987, ch. 422, § 3; Laws, 1999, ch. 468, § 1, eff from and after Jan. 1, 2000.

JUDICIAL DECISIONS

Plaintiffs may not state a private cause of action against a defendant under Miss. Code Ann. § 83-2-3. Wells v. Shelter Gen. Ins. Co., 217 F. Supp. 2d 744 (S.D. Miss. 2002).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 69.

§ 83-2-5. Filing of rates and related information by residual market mechanisms.

Residual market mechanisms shall file with the commissioner all rates, supplementary rate information, supporting information, policy forms, and endorsements at least thirty (30) days before the proposed effective date. The commissioner may give written notice within thirty (30) days of the receipt of the filing that additional time, not to exceed thirty (30) days from the date of such notice, is necessary to consider the filing. Upon written application by the residual market mechanism, the commissioner may authorize rates to be effective before the expiration of the waiting period or an extension thereof. A filing is deemed to meet the requirements of this chapter and becomes effective unless disapproved by the commissioner before the expiration of the waiting period or an extension thereof. Whenever a filing made under this section is not accompanied by sufficient supporting information, the commissioner shall inform the filing entity as to what information is required to complete the filing. The filing shall not be deemed to be made until such information is furnished.

SOURCES: Laws, 1987, ch. 422, § 4, eff from and after January 1, 1988.

Cross References — Provision that filing may be made by rate service organization instead of insurer, see § 83-2-9.

§ 83-2-7. Filing of rates and related information by insurers; exceptions; effective date of rate adjustment filing.

(1) Except as provided in Section 83-2-9 and subsections (2) and (3) of this section, every insurer shall file with the commissioner all rates, supplementary rate information, policy forms and endorsements at least thirty (30) days prior to the proposed effective date which shall be stated in the filing. Rates, supplementary rate information, policy forms and endorsements need not be filed for inland marine risks which by general custom of the business are not written according to manual rules or rating plans. Upon the request of the commissioner, supporting information shall also be filed. Any filing made under this section is deemed to be approved unless disapproved by the Commissioner of Insurance within thirty (30) days after the date of filing.

(2) A filing of adjustments of rates for existing rating systems made under this section which does not involve a change in the relationship between such rates and the expense portion thereof or does not involve a change of the element of expenses which are paid as a percentage of premiums and does not involve a change in rate relativities among such classifications on any basis other than loss experience is effective on the date specified in the filing which shall not be less than thirty (30) days after the filing is made and shall be deemed to meet the requirements of this chapter.

(3) The commissioner may give written notice within thirty (30) days of the receipt of the filing that additional time, not to exceed sixty (60) days from the date of such notice, is necessary to consider the filing. A filing is deemed to

meet the requirements of this chapter and becomes effective unless disapproved by the commissioner before the expiration of the waiting period or an extension thereof. Whenever a filing made under this section is not accompanied by sufficient supporting information, the commissioner shall inform the filing entity as to what information is required to complete the filing. The filing shall not be deemed to be completed until such information is furnished.

(4) No insurance company shall make or issue a contract or policy except in accordance with filings made with the commissioner, if such filings are required.

SOURCES: Laws, 1987, ch. 422, § 5; Laws, 2010, ch. 311, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, substituted "subsections (2) and (3)" for "subsection (2)" in (1); deleted the last paragraph in (2), which dealt with the power of the commissioner to delay the effective date of a filing; and added present (3) and redesignated former (3) as (4).

Cross References — Provisions that filing may be made by rate service organization instead of insurer, and that insurer may make valid filing by giving commissioner written notice of adherence to rates filed by rate service organization, see § 83-2-9.

JUDICIAL DECISIONS

1. Anticoncurrent-causation clauses.
2.-5. [Reserved for future use.]
6. Under former § 83-3-107.

1. Anticoncurrent-causation clauses.

Anticoncurrent-causation clause in a homeowners' policy, which stated that the insurer did not cover damage that was caused by both a covered peril and an excluded peril, was valid and enforceable because the clause was unambiguous, the clause had been approved by the Mississippi Department of Insurance pursuant to Miss. Code Ann. § 83-2-7(1) and Miss. Code Ann. § 83-2-11(1)(b), the clause was not forbidden under Mississippi case law or statute, and the clause abrogated the common law rule on efficient proximate causation, which Mississippi had not adopted as a matter of public policy. Leonard v. Nationwide Mut. Ins. Co., 499 F.3d 419 (5th Cir. 2007), writ of certiorari denied by 552 U.S. 1310, 128 S. Ct. 1873, 170 L. Ed. 2d 745, 2008 U.S. LEXIS 3106, 76 U.S.L.W. 3554 (2008).

2.-5. [Reserved for future use.]

6. Under former § 83-3-107.

The insurance commission is vested with the power to require insurance companies to file copies of and information concerning the forms they intend to use in various fire and casualty policies, but Code 1942, §§ 5821 and 5834-03 do not directly confer any power on the commission to approve or disapprove the form of insurance policies as such. Mississippi Ins. Comm'n v. Mississippi State Rating Bureau, 220 So. 2d 328 (Miss. 1969).

§ 83-2-9. Public inspection of filed rates and related information; rates exceeding those filed; filing by rate service organization; filing by reference.

(1) All rates, supplementary rate information, policy forms, endorsements and any supporting information filed under this chapter shall be open to public inspection at any reasonable time as soon as filed. Copies may be obtained by any person on request and upon payment of a reasonable charge.

(2) A rate in excess of that provided by a filing otherwise applicable may be used on a specific risk upon written application of an insured, stating specific reasons why a risk requires higher than standard rates on file by an insurer notwithstanding any other provisions of this chapter. An endorsement shall be attached to the policy giving such reasons and the percentage of surcharge. A copy of the endorsement shall be kept by the insurer and its agent. Copies of such endorsements shall be furnished to the commissioner upon request for his review to determine that the rates are not excessive, inadequate or unfairly discriminatory.

(3) Rate service organization filings:

(a) The filings required by Section 83-2-5 and Section 83-2-7 may be made by a rate service organization designated by an insurer or residual market mechanism.

(b) An insurer may make a filing in compliance with Section 83-2-7 by giving written notice to the commissioner that the insurer is following rates filed by a rate service organization in any particular line with any exceptions clearly set forth as necessary to fully inform the commissioner.

(4) An insurer may file by reference to rates, supplementary rate information, supporting information, policy forms and endorsements filed by and effective for another insurer or a rate service organization.

SOURCES: Laws, 1987, ch. 422, § 6, eff from and after January 1, 1988.

Cross References — Definitions of "advisory organization" and "rate service organization," see § 83-2-1.

Filing requirements concerning rates and related information, see § 83-2-7.

§ 83-2-11. Disapproval of rates by commissioner and related procedure; interim rates in absence of legally effective rates.

(1) The commissioner shall disapprove a rate or policy form or endorsement if the commissioner finds that the rate is unjustified, or the policy form or endorsement:

(a) Is in any respect in violation of or does not comply with this code; or

(b) Contains or incorporates by reference any inconsistent, ambiguous or misleading clauses or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract.

(2) Disapproval procedure:

(a) Upon disapproval of a filing, the commissioner shall issue an order specifying the manner in which the filing fails to meet the requirements of this chapter. The filer shall be given a hearing upon written request made within thirty (30) days after the disapproval order.

(b) If the commissioner disapproves a rate, policy form or endorsement currently in effect, the commissioner shall issue such an order only after a hearing held on not less than twenty (20) days written notice to the filing insurer or rating organization. The insurer or rating organization may waive the hearing. An order shall be issued within fifteen (15) days after the close of the hearing or within thirty (30) days after the filing of a waiver of hearing and shall specify in what respects the rates policy form or endorsement fail to meet the requirements of this chapter. The order shall also state when the further use of such policy form or endorsement or rate in contracts of insurance made thereafter shall be prohibited which shall be within a reasonable period of time, but not less than forty-five (45) days. The order may include a provision for premium adjustment for policies issued, renewed or nonrenewed after the effective date of such order.

(3) Whenever an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner on request of the insurer shall specify interim rates for the insurer that are sufficient to protect the interests of all parties and the commissioner may order that a specified portion of the premiums be placed in an escrow account approved by the commissioner. When new rates become legally effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds to policyholders that are de minimis shall not be required.

SOURCES: Laws, 1987, ch. 422, § 7, eff from and after January 1, 1988.

JUDICIAL DECISIONS

1. McCarran-Ferguson Act.
2. Anticoncurrent-causation clauses.

1. McCarran-Ferguson Act.

Arbitration of an insurance dispute under the Federal Arbitration Act, 9 U.S.C.S. § 1 et seq., was not reverse-preempted by the McCarran-Ferguson Act because a state insurance policy against mandatory arbitration did not constitute a "state law"; moreover, an informal disapproval did not have any effect because the formal procedures in Miss. Code Ann. § 83-2-11 were not followed. Gulf Ins. Co. v. Neel-Schaffer, Inc., 904 So. 2d 1036 (Miss. 2004).

2. Anticoncurrent-causation clauses.

Anticoncurrent-causation clause in a homeowners' policy, which stated that the insurer did not cover damage that was caused by both a covered peril and an excluded peril, was valid and enforceable because the clause was unambiguous, the clause had been approved by the Mississippi Department of Insurance pursuant to Miss. Code Ann. § 83-2-7(1) and Miss. Code Ann. § 83-2-11(1)(b), the clause was not forbidden under Mississippi case law or statute, and the clause abrogated the common law rule on efficient proximate causation, which Mississippi had not adopted as a matter of public policy. Leonard v. Nationwide Mut. Ins. Co., 499 F.3d 419 (5th Cir. 2007), writ of certiorari denied by 552 U.S. 1310, 128 S. Ct. 1873, 170 L. Ed. 2d 745, 2008 U.S. LEXIS 3106, 76 U.S.L.W. 3554 (2008).

§ 83-2-13. Furnishing rate information to insureds; hearing of complaints as to application of rating system; appeals.

(1) Every insurer or rate service organization shall furnish to any insured affected by a rate published by it all pertinent information as to such rate within a reasonable time after receipt of a written request and upon payment of a reasonable charge.

(2) Every insurer and rate service organization shall provide reasonable means whereby any person aggrieved by the application of its rating system may be heard within this state on written request to review the manner in which such rating system is applied in relation to the insurance afforded. If the insurer fails to grant or reject such request within thirty (30) days, the applicant may proceed in the same manner as if the application has been rejected. A party affected by the action of an insurer with respect to a request under this subsection may appeal to the commissioner within thirty (30) days after receipt of notice of such action. The commissioner, after a hearing held upon not less than ten (10) days written notice to the appellant and insurer, may affirm, modify or reverse such action.

SOURCES: Laws, 1987, ch. 422, § 8, eff from and after January 1, 1988.

§ 83-2-15. Rating bureau as exclusive provider of services relating to rates; licensing of and services provided by rate service organization.

(1) No rate service organization other than the Rating Bureau established pursuant to Section 83-3-5 shall provide any service relating to the rates of any insurance subject to this chapter, and no insurer shall utilize the services of such organization for such purposes unless the organization has obtained a license.

(2) A rate service organization may perform the following services upon request of the Commissioner of Insurance:

(a) Collect, compile and furnish loss or expense statistics;

(b) Recommend rates or supplementary rate information;

(c) Advise about rate questions and provide supporting information for rates;

(d) Make inspections, surveys and audits;

(e) Conduct research and on-site inspections in order to prepare classifications of public fire defenses;

(f) Prepare and file policy forms and endorsements and consult with members, subscribers and others relating to their use;

(g) Provide actuarial, statistical and administrative services to insurers and insurer-supported organizations;

(h) Conduct and report on the content of research projects; and

(i) Furnish any other services related to those enumerated in this subsection.

(3) A rate service organization or an advisory organization shall not refuse to supply any services for which it is licensed in this state to any insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services. A rate service organization shall not require the purchase of any specific services as a condition to obtaining the services sought, provided the furnishing of the requested services does not place an unreasonable burden on the rate service organization.

(4) A rate service organization applying for a license shall include with its application:

(a) A copy of its constitution, articles of association or incorporation, bylaws and any other rules or regulations governing the conduct of its business;

(b) A list of its members and subscribers;

(c) A service and acknowledgement of service of process as provided for insurance companies under Section 83-21-39; and

(d) A statement showing its technical qualifications.

(5) Upon a finding by the commissioner that the applicant is qualified, the commissioner shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rate service organization. Each application under this subsection shall be granted or denied in whole or in part by the commissioner within sixty (60) days after the date of its filing. Licenses issued pursuant to this section shall remain in effect until suspended or revoked by the commissioner. The fee for said license shall be Twenty-five Dollars ($25.00).

SOURCES: Laws, 1987, ch. 422, § 9, eff from and after January 1, 1988.

Cross References — Performance of activities enumerated in this section by registered advisory organization, see § 83-2-17.

§ 83-2-17. Advisory organizations; registration; unfair practices.

(1) An advisory organization shall not provide any service relating to the rates of any insurer subject to this chapter, and an insurer shall not utilize the services of an advisory organization for such purposes, unless the advisory organization has registered under subsection (3).

(2) A registered advisory organization may perform one or more of the authorized activities enumerated in Section 83-2-15 but such advisory organization shall not make any filings on behalf of insurers.

(3) An advisory organization shall submit at the time of registration:

(a) A copy of its constitution, articles of association or incorporation, bylaws and any other rules or regulations governing the conduct of its business;

(b) A list of its members and subscribers;

(c) A service and acknowledgement of service of process as provided for insurance companies under Section 83-21-39; and

(d) An agreement that the commissioner may examine each advisory organization in accordance with the provisions of Section 83-2-25.

(4) If after a hearing the commissioner finds that any activity or practice of any advisory organization is unfair, unreasonable or otherwise inconsistent with the provisions of this chapter, the commissioner shall specify the finding in an order requiring the discontinuance of such activity or practice.

SOURCES: Laws, 1987, ch. 422, § 10, eff from and after January 1, 1988.

Cross References — Definition of "advisory organization," see § 83-2-1.

§ 83-2-19. Repealed.

Repealed by Laws, 2000, ch. 314, § 1, eff from and after passage (approved April 3, 2000).

[Laws, 1987, ch. 422, § 11, eff from and after January 1, 1988]

Editor's Note — Former § 83-2-19 contained provisions requiring each insurer licensed to write property and casualty insurance in Mississippi to annually submit reports of loss and expense experience to the Commissioner of Insurance.

§ 83-2-21. Prohibition of insurer agreements as to adherence to or use of rates and related information; exception for insurers under common ownership or management.

An insurer may not agree with any other insurer to adhere to or use any rate or supplementary rate information. The fact that an insurer adheres to or uses such material is not sufficient in itself to support a finding that an agreement to adhere or use exists, but such fact may supplement other evidence of such agreement. Two (2) or more insurers having common ownership or operating in this state under common management or control may act in concert between or among themselves in the same manner as if they constitute a single insurer.

SOURCES: Laws, 1987, ch. 422, § 12, eff from and after January 1, 1988.

Cross References — Provisions allowing cooperation among insurers participating in joint underwriting, pools or residual mechanisms, with respect to ratemaking and related activity, see § 83-2-23.

§ 83-2-23. Cooperation among insurers participating in joint underwriting, pools, residual market mechanisms; registration with and review by commissioner; unfair practices.

(1) Notwithstanding Section 83-2-21, insurers participating in joint underwriting, pools or residual market mechanisms may act in cooperation with each other in the making of rates, supplementary rate information, policy forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other such information and in the conduct of research in connection with such activity.

(2)(a) Except to the extent modified by this section, insurers participating in joint underwriting, pool or residual market mechanisms are subject to the other provisions of this chapter.

(b) Every pool shall file with the commissioner a copy of its constitution, articles of association or incorporation, bylaws and any other rules or regulations governing its activities, a list of its members, the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served, and any changes in the foregoing.

(c) Any residual market mechanism, plan or agreement to implement such a mechanism, and any amendments thereto, shall be submitted in writing to the commissioner for approval, together with such information as the commissioner may reasonably require.

(d) If, after a hearing, the commissioner finds that any activity or practice of insurers participating in joint underwriting, pool or residual market mechanisms is unfair, unreasonable or otherwise inconsistent with the provisions of this chapter, the commissioner shall issue a written order specifying in what respects such activity or practice is unfair, unreasonable or otherwise inconsistent with the provisions of this chapter and require the discontinuance of such activity or practice.

SOURCES: Laws, 1987, ch. 422, § 13, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 69.

§ 83-2-25. Compliance review; related reports and records.

(1) The commissioner may examine any insurer, advisory organization, rate service organization, pool or residual market mechanism to ascertain compliance with this chapter.

(2) Every insurer, advisory organization, rate service organization, pool and residual market mechanism shall maintain records of the type and kind reasonably adapted to its method of operation. Such records shall contain the experience, data, statistics and other information collected or used by it in its activities. These records shall be available for examination or inspection by the commissioner at any time upon reasonable notice.

(3) The cost of an examination made pursuant to this section shall be paid by the examined party in the same manner as provided by Section 83-1-27.

(4) The commissioner may accept the report of an examination made by the insurance supervisory official of another state in lieu of an examination under this section.

SOURCES: Laws, 1987, ch. 422, § 14, eff from and after January 1, 1988.

§ 83-2-27. Payment of dividends, savings or unabsorbed premium deposits to insureds.

Nothing in this chapter shall be construed to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be deemed a rating plan.

SOURCES: Laws, 1987, ch. 422, § 15, eff from and after January 1, 1988.

§ 83-2-29. Penalties; procedures for license suspension.

(1) If the commissioner finds that any person or organization has violated any provision of this chapter, the commissioner may impose a penalty in accordance with Section 83-5-85. Technical violations arising from systems or computer errors of the same type shall be treated as a single violation. In the event of an overcharge, if the insurer makes restitution, including payment of interest, no penalty shall be imposed.

(2) The commissioner, within his discretion, is authorized to abate such part of the foregoing penalty as the facts of the particular case warrant and to bring suit for such lesser amount as may be determined, or to accept such lesser amount in settlement of the state's claim for penalties.

(3) The commissioner may suspend the license of any rate service organization or insurer for failure to comply with an order of the commissioner within the time limit set forth in the order, or any extension thereof which the commissioner may grant. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the stated period unless modified or rescinded by the commissioner until the order upon which the suspension is based is modified, rescinded or reversed.

(4) A license shall not be suspended except upon a written order of the commissioner stating his findings, made after a hearing held upon not less than ten (10) days written notice to such person or organization, specifying the alleged violation.

SOURCES: Laws, 1987, ch. 422, § 16, eff from and after January 1, 1988.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former § 83-3-37.

1.-5. [Reserved for future use.]

6. Under former § 83-3-37.

Contract by which insurance agent induced insured to take out policies by making payment about amount of premium on past-due note owing by third party to insured, being in violation of statute forbidding special inducements in making of insurance contracts, insured held not entitled to recover from insurance companies premiums paid under policies later canceled, which premiums had never been forwarded by agent to insurance companies, on ground that parties to an illegal contract should not recover money paid under contract. City of N.Y. Ins. Co. v. Greenwood Int'l Co., 170 Miss. 644, 155 So. 346 (1934).

§ 83-2-31. Appeals; rates charged pending disposition of appeal.

Any order issued by the commissioner under this chapter may be appealed to the Chancery Court of the First Judicial District of Hinds County in the manner provided by law. Where the order of the commissioner results in an increase or decrease in rates, any insurer affected thereby with leave of court, pending final disposition of the proceedings in the court, may continue to charge rates which were obtained prior to such order of decrease, or may charge rates resulting from such order of increase on condition that the difference in the premiums be deposited in a special account by the insurer or paid to the holders of policies issued after the order of the commissioner, as the court may determine.

SOURCES: Laws, 1987, ch. 422, § 17, eff from and after January 1, 1988.

§ 83-2-33. Property and casualty insurance companies to contribute to Insurance Department Fund.

All property and casualty insurance companies doing business in this state shall contribute annually, at such times as the Insurance Commissioner shall determine, in proportion to their gross premiums collected within the State of Mississippi during the preceding year, to a special fund in the State Treasury to be known as the "Insurance Department Fund" to be expended by the Insurance Commissioner in the payment of the expenses of the Department of Insurance as the commissioner may deem necessary. The commissioner is hereby authorized to employ such actuarial and other assistance as shall be necessary to carry out the duties of the department; and such employees shall be under the authority and direction of the Insurance Commissioner. The amount to be contributed annually to the fund shall be fixed each year by the Insurance Commissioner at a percentage of the gross premiums so collected during the preceding year. However, a minimum assessment of One Hundred Dollars ($100.00) shall be charged to each licensed property and casualty insurance company regardless of the gross premium amount collected during the preceding year.

The total contributions collected for the Insurance Department Fund shall not exceed the sum of Seven Hundred Fifty Thousand Dollars ($750,000.00) in each fiscal year.

SOURCES: Laws, 1987, ch. 422, § 55; Laws, 1990, ch. 557, § 3; Laws, 1991, ch. 430 § 3; Laws, 1998, ch. 451, § 1, eff from and after July 1, 1998.

Cross References — Payment of filing fee by property and casualty insurers to be deposited into Insurance Department Fund, see § 83-2-35.

Contributions of life, health and accident insurance companies to Insurance Department Fund, see § 83-5-72.

Requirement that the department deposit all sums collected from home warranty associations for failing to timely file its annual statement to the credit of the Insurance Department Fund, see § 83-57-27.

§ 83-2-35. Payment of fee by property and casualty insurers; deposit of fee into Insurance Department Fund.

(1) This section applies to all forms of property and casualty insurance on risks or operations in this state by any insurer authorized to do business in this state, except:

(a) Accident and health;
(b) Ocean marine insurance;
(c) Reinsurance;
(d) Aircraft liability and aircraft hull insurance;
(e) Title insurance;
(f) Credit accident and health insurance.

(2) All such insurers shall pay to the Commissioner of Insurance a fee of Fifteen Dollars ($15.00) for each form or rate filing filed with the commissioner. The commissioner shall pay such fees into the special fund in the State Treasury designated as the "Insurance Department Fund."

SOURCES: Laws, 1991, ch. 467 § 1, eff from and after passage (approved March 29, 1991).

CHAPTER 3

Commissioner of Insurance, Rating Bureau and Rates

Article 1. Commissioner of Insurance and Rating Bureau 83-3-1
Article 3. Casualty Insurance Rates 83-3-101
Article 5. Advisory Organizations. [Repealed]
Article 7. Agency Review. [Repealed]

ARTICLE 1.

COMMISSIONER OF INSURANCE AND RATING BUREAU.

SEC.
83-3-1. Repealed.
83-3-2. Meaning of "Insurance Commission."
83-3-3. Repealed.
83-3-5. Rating bureau.
83-3-7. Members of bureau.
83-3-9. Expense of bureau paid by companies.
83-3-11. Funds provided by assessment against companies.
83-3-13. Bureau to inspect every risk rated.
83-3-15. Repealed.
83-3-17. Bureau not to make agreement for placing insurance.
83-3-19. Rating Bureau to furnish information to Commissioner of Insurance.
83-3-21. Examination of Rating Bureau; reports.
83-3-23. Bureau not to discriminate in rates.
83-3-24. Factors to be considered when rating fire district, grading fire departments and awarding credits considered in determining overall fire rating based on condition of certain fire equipment.
83-3-25 through 83-3-41. Repealed.

§ 83-3-1. Repealed.

Repealed by Laws, 1987, ch. 422, § 30, eff from and after January 15, 1988.

[Codes, 1930, § 5302; 1942, § 5816; Laws, 1924, ch. 188; Laws, 1935, Ex. ch 34; Laws, 1966, ch. 445, § 13; Laws, 1977, ch. 303; Laws, 1978, ch. 520, § 15; reenacted and amended, Laws, 1982, ch. 487, § 1]

Editor's Note — Former § 83-3-1 provided for the creation of the Insurance Commission. See § 83-3-2 which provides that any reference to Insurance Commission in Title 83 shall mean the Commissioner of Insurance.

§ 83-3-2. Meaning of "Insurance Commission."

Any reference to Insurance Commission in Title 83 shall mean the Commissioner of Insurance.

SOURCES: Laws, 1987, ch. 422, § 29; reenacted, Laws, 1991, ch. 317, § 1; reenacted without change, Laws, 1998, ch. 456, § 1, eff from and after July 1, 1998.

§ 83-3-3. Repealed.

Repealed by Laws, 1987, ch. 422, § 30, eff from and after January 1, 1988.

[Codes, 1930, § 5302; 1942, § 5816; Laws, 1924, ch. 188; Laws, 1935, Ex. ch. 34; Laws, 1966, ch. 445, § 13; reenacted without change, Laws, 1982, ch. 487, § 2]

Editor's Note — Former § 83-3-3 pertained to the approval of rate schedules.

§ 83-3-5. Rating bureau.

All fire insurance companies organized or admitted to do business in this state shall maintain a Rating Bureau, to be composed of such number of persons resident in this state as shall be desired and who shall be skilled in the business of fire insurance rating, fire hazard, fire protection engineering, and fire insurance inspection. Said Rating Bureau may be chartered or operated as a corporation, or association, or limited partnership, and shall provide for such officers, board of directors, and bylaws as it may deem proper, and change or alter the same from time to time as may be necessary. The Rating Bureau shall maintain an office in the Jackson metropolitan area; and all of the correspondence, files, papers, and documents of such Rating Bureau shall be preserved by said bureau, and shall be opened at all times to the inspection and examination of any insured or any person interested.

SOURCES: Codes, 1930, § 5303; 1942, § 5817; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 3; Laws, 1987, ch. 422, § 18; reenacted, Laws, 1991, ch. 317, § 2; reenacted without change, Laws, 1998, ch. 456, § 2, eff from and after July 1, 1998.

Cross References — State rating bureau's manager's membership on the state fire academy advisory board, see § 45-11-8.

Provision of rate services by Rating Bureau only, see § 83-2-15.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former § 83-3-29.

1.-5. [Reserved for future use.]

6. Under former § 83-3-29.

The Casualty Rating Law of 1946 does not operate to amend or repeal pro tanto the Fire Rating Law of 1924, but both must be construed together so as to reconcile and give full effect to all provisions in both where reasonably possible. Insurance Co. of N. Am. v. Insurance Comm'n, 237 Miss. 759, 116 So. 2d 224 (1959).

Federal antitrust laws may not be invoked against the fixing of fire insurance rates by a state commission upon the report and recommendation of a rating bureau of which stock fire insurance companies are members. Insurance Co. of N. Am. v. Insurance Comm'n, 237 Miss. 759, 116 So. 2d 224 (1959).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 73.

CJS. 44 C.J.S., Insurance §§ 81-83.

§ 83-3-7. Members of bureau.

Each fire insurance company licensed to do business in this state shall become a member of the Rating Bureau and shall pay its proportion of the expenses of organization, maintenance, and operation of said bureau, as provided in Section 83-3-9.

SOURCES: Codes, 1930, § 5312; 1942, § 5826; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 4; Laws, 1987, ch. 422, § 19; reenacted, Laws, 1991, ch. 317, § 3; reenacted without change, Laws, 1998, ch. 456, § 3, eff from and after July 1, 1998.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 73.

CJS. 44 C.J.S., Insurance §§ 81-83.

§ 83-3-9. Expense of bureau paid by companies.

The expense of the organization, maintenance, and operation of the Rating Bureau shall be paid by the members of the bureau, and no part of said expense shall in any event be paid by the state or by any county or municipality. The expense not covered by user fees shall be shared by all members through an annual assessment as established by the board of directors with due consideration given to the extent of utilization of bureau services. Upon failure of any company to pay its lawful proportion of said expense within thirty (30) days after the same is due and payable, the Rating Bureau may refuse to furnish its service to such delinquent member, and shall report such delinquency to the Commissioner of Insurance, who for such delinquency may suspend or revoke the license of such delinquent company. The bureau shall establish equitable fees for its services sufficient to cover the operations required under Section 83-2-1 et seq.

SOURCES: Codes, 1930, § 5314; 1942, § 5828; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 5; Laws, 1987, ch. 422, § 20; reenacted, Laws, 1991, ch. 317, § 4; reenacted without change, Laws, 1998, ch. 456, § 4, eff from and after July 1, 1998.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 73.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance Form 11.1 (petition or application by insurance company against state commissioner of insurance to enjoin further proceedings to suspend or revoke insurance company's certificate of authority).

CJS. 44 C.J.S., Insurance §§ 81-83.

§ 83-3-11. Funds provided by assessment against companies.

It shall be the duty of the Rating Bureau to provide a fund sufficient to enable it to inspect every risk specifically rated, to make a written survey of such risks, to pay the salary or expense of its officers and employees, and to cover any other expense which may be necessary or proper to enable it to comply with and enforce the provisions of this article. All of the expense fund shall be provided and paid by the fire insurance companies doing business in this state.

SOURCES: Codes, 1930, § 5318; 1942, § 5832; Laws, 1924, ch. 188; Laws, 1935, Ex. ch. 34; Laws, 1962, ch. 467; reenacted without change, Laws, 1982, ch. 487, § 6; Laws, 1987, ch. 422, § 21; reenacted, Laws, 1991, ch. 317, § 5; reenacted without change, Laws, 1998, ch. 456, § 5, eff from and after July 1, 1998.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 73.

CJS. 44 C.J.S., Insurance §§ 81-83.

§ 83-3-13. Bureau to inspect every risk rated.

The Rating Bureau, through its members and employees, shall inspect every risk specifically rated by it on schedule, and make a written survey of such risk, which shall be filed as a permanent record in such Rating Bureau. A copy of such survey shall be furnished to the owner, other person in interest, or the Commissioner of Insurance upon request.

SOURCES: Codes, 1930, § 5304; 1942, § 5818; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 7; Laws, 1987, ch. 422, § 22; reenacted, Laws, 1991, ch. 317, § 6; reenacted without change, Laws, 1998, ch. 456, § 6, eff from and after July 1, 1998.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 73.

CJS. 44 C.J.S., Insurance §§ 81-83.

§ 83-3-15. Repealed.

Repealed by Laws 1987, ch. 422, § 30, eff from and after January 1, 1988.

[Codes, 1930, § 5305; 1942, § 5819; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 8]

Editor's Note — Former § 83-3-15 required schedule changes be submitted to the insurance commission.

§ 83-3-17. Bureau not to make agreement for placing insurance.

The rating bureau, or any of its officers, shall not make any contract or agreement, express or implied, with any person, insurer, or party insured, that the whole, or any part, of the insurance shall be written or placed with any particular insurer.

SOURCES: Codes, 1930, § 5306; 1942, § 5820; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 9; reenacted without change, Laws, 1991, ch. 317, § 7; reenacted without change, Laws, 1998, ch. 456, § 7, eff from and after July 1, 1998.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 73.

CJS. 44 C.J.S., Insurance §§ 81-83.

§ 83-3-19. Rating Bureau to furnish information to Commissioner of Insurance.

The Rating Bureau is required to answer any inquiries that may be made by the Commissioner of Insurance touching its organization, maintenance, operation, or any other matter connected with its transactions; and said commissioner may require the filing of such other information as the commissioner may deem proper. It shall be the duty of such bureau to promptly make reply to such inquiries, in writing, and to furnish the information requested by the Commissioner of Insurance.

SOURCES: Codes, 1930, § 5307; 1942, § 5821; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 10; Laws, 1987, ch. 422, § 23; reenacted, Laws, 1991, ch. 317, § 8; reenacted without change, Laws, 1998, ch. 456, § 8, eff from and after July 1, 1998.

JUDICIAL DECISIONS

1. In general.

The insurance commission is vested with the power to require insurance companies to file copies of and information concerning the forms they intend to use in various fire and casualty policies, but Code 1942, §§ 5821 and 5834-03 do not directly confer any power on the commission to approve or disapprove the form of insurance policies as such. Mississippi Ins. Comm'n v. Mississippi State Rating Bureau, 220 So. 2d 328 (Miss. 1969).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 73.

CJS. 44 C.J.S., Insurance §§ 81-83.

§ 83-3-21. Examination of Rating Bureau; reports.

The Commissioner of Insurance shall have the power to examine the Rating Bureau as often as he deems expedient, at the expense of the bureau. The commissioner shall report his findings in writing, which shall be filed in his office and made a part of the annual report of his office; and a copy thereof shall be filed with the Attorney General for the information of the legal department of the state.

SOURCES: Codes, 1930, § 5308; 1942, § 5822; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 11; Laws, 1987, ch. 422, § 24; reenacted, Laws, 1991, ch. 317, § 9; reenacted without change, Laws, 1998, ch. 456, § 9, eff from and after July 1, 1998.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 73.

CJS. 44 C.J.S., Insurance §§ 81-83.

§ 83-3-23. Bureau not to discriminate in rates.

The Rating Bureau shall not recommend any rate for insurance upon property in this state which discriminates unfairly in the same territorial classification between risks in the application of like charges and credits, or which discriminates unfairly between risks of essentially the same hazard and having substantially the same degree of protection against fire.

SOURCES: Codes, 1930, § 5309; 1942, § 5823; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 12; Laws, 1987, ch. 422, § 25; reenacted, Laws, 1991, ch. 317, § 10; reenacted without change, Laws, 1998, ch. 456, § 10, eff from and after July 1, 1998.

Cross References — Discrimination in casualty insurance rates, see § 83-3-121.

JUDICIAL DECISIONS

1. In general.

Federal antitrust laws may not be invoked against the fixing of fire insurance rates by a state commission upon the report and recommendation of a rating bureau of which stock fire insurance companies are members. Insurance Co. of N. Am. v. Insurance Comm'n, 237 Miss. 759, 116 So. 2d 224 (1959).

The Casualty Rating Law of 1946 does not operate to amend or repeal pro tanto the Fire Rating Law of 1924, but both must be construed together so as to reconcile and give full effect to all provisions in both where reasonably possible. Insurance Co. of N. Am. v. Insurance Comm'n, 237 Miss. 759, 116 So. 2d 224 (1959).

Under this provision loss experience is not a criterion for fixing fire premium rates. Insurance Co. of N. Am. v. Insurance Comm'n, 237 Miss. 759, 116 So. 2d 224 (1959).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 73.

CJS. 44 C.J.S., Insurance §§ 81-83.

§ 83-3-24. Factors to be considered when rating fire district, grading fire departments and awarding credits considered in determining overall fire rating based on condition of certain fire equipment.

(1) When rating a municipality or fire district, including evaluations of rural or volunteer fire departments, the Rating Bureau shall consider the mileage, condition and maintenance of the fire trucks rather than the age of the fire trucks. For the purpose of grading municipalities or fire districts, including rural and volunteer fire departments, and awarding credits that are considered in determining an overall fire rating based upon the condition of their fire trucks, the Rating Bureau shall publish guidelines for use in the grading of fire trucks not later than January 30 of the calendar year during which the Rating Bureau will apply the guidelines. These guidelines shall be published and made available to each municipality and fire district, including rural and volunteer fire departments, on the Rating Bureau's website not later than January 30 of the calendar year during which the Rating Bureau will apply the guidelines. If a fire truck in a municipality or fire district, including rural and volunteer fire departments, satisfies the guidelines, then the Rating Bureau shall not recommend the replacement of the fire truck before the next grading process.

(2) For the purpose of grading fire departments, the alternative water supply standard shall be two hundred fifty (250) gallons per minute for a sustained period of one (1) hour.

SOURCES: Laws, 1988, ch. 529; reenacted, 1991, ch. 317, § 11; reenacted without change, Laws, 1998, ch. 456, § 11; Laws, 2011, ch. 486, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment rewrote the section.

§§ 83-3-25 through 83-3-41. Repealed.

Repealed by Laws 1987, ch. 422, § 30, eff from and after January 1, 1988.

§ 83-3-25. [Codes, 1930, § 5310; 1942, § 5824; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 13]

§ 83-3-27. [Codes, 1930, § 5311; 1942, § 5825; Laws, 1924, ch. 188; Laws, 1938, ch. 196; Laws, 1962, ch. 471; reenacted without change, Laws, 1982, ch. 487, § 14]

§ 83-3-29. [Codes, 1930, § 5311; 1942, § 5825; Laws, 1924, ch. 188; Laws, 1938, ch. 196; Laws, 1962, ch. 471; reenacted without change, Laws, 1982, ch. 487, § 15]

§ 83-3-31. [Codes, 1930, § 5313; 1942, § 5827; Laws, 1924, ch. 188; Laws, 1962, ch. 472; reenacted without change, Laws, 1982, ch. 487, § 16]

§ 83-3-33. [Codes, 1930, § 5319; 1942, § 5833; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 17]

§ 83-3-35. [Codes, 1930, § 5315; 1942, § 5829; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 18]

§ 83-3-37. [Codes, 1930, § 5316; 1942, § 5830; Laws, 1924, ch. 188; reenacted without change, Laws 1982, ch. 487, § 19]

§ 83-3-39. [Codes, 1930, § 5317; 1942, § 5831; Laws, 1924, ch. 188; reenacted without change, Laws, 1982, ch. 487, § 20]

§ 83-3-41. [Codes, 1930, § 5320; 1942, § 5834; Laws, 1924, ch. 188; Laws, 1946, ch. 354, § 1; reenacted without change, Laws, 1982, ch. 487, § 21]

Editor's Note — Former § 83-3-25 provided that the insurance commission was to hear discrimination complaints.

Former § 83-3-27 required insurers to submit statistical reports.

Former § 83-3-29 required the adjustment of rates if profits or losses were excessive.

Former § 83-3-31 permitted insurers to file an application for uniform percentage deviation from class rates.

Former § 83-3-33 authorized the revocation of a fire insurance company's license to do business for allowing forbidden inducements.

Former § 83-3-35 permitted appeals by certiorari to chancery courts.

Former § 83-3-37 provided for penalties for violations of provisions of Chapter 1 of Title 83.

Former § 83-3-39 provided that the provisions of Chapter 1 of Title 83 were not applicable to railroad corporations or other common carriers.

Former § 83-3-41 provided that Chapter 1 of Title 83 was not applicable to any mutual insurance company or reciprocal or inter-insurance exchange.

ARTICLE 3.

CASUALTY INSURANCE RATES.

SEC.
83-3-101 through 83-3-119. Repealed.
83-3-121. Rebates prohibited.
83-3-123 through 83-3-129. Repealed.

§§ 83-3-101 through 83-3-119. Repealed.

Repealed by Laws, 1987, ch. 422, § 31, eff from and after January 1, 1988.

§ 83-3-101. [Codes, 1942, § 5834-01; Laws, 1946, ch. 356, § 1; Laws, 1948, ch. 351, § 1; reenacted without change, Laws, 1982, ch. 487, § 22]

§ 83-3-103. [Codes, 1942, § 5834-01; Laws, 1946, ch. 356, § 1; Laws, 1948, ch. 351, § 1; reenacted without change, Laws, 1982, ch. 487, § 23]

§ 83-3-105. [Codes, 1942, § 5834-02; Laws, 1946, ch. 356, § 2; reenacted without change, Laws, 1982, ch. 487, § 24]

§ 83-3-107. [Codes, 1942, § 5834-03; Laws, 1946, ch. 356, § 3; reenacted without change, Laws, 1982, ch. 487, § 25]

§ 83-3-109. [Codes, 1942, § 5834-04; Laws, 1946, ch. 356, § 4; reenacted without change, Laws, 1982, ch. 487, § 26]

§ 83-3-111. [Codes, 1942, § 5834-05; Laws, 1946, ch. 356, § 5; Laws, 1962, ch. 468; Laws, 1971, ch. 392, § 1; Laws, 1979, ch. 416, § 1; Laws, 1978, ch. 424, § 1; Laws, 1980, ch. 376; reenacted, Laws, 1982, ch. 487, § 27]

§ 83-3-113. [Codes, 1942, § 5834-06; Laws, 1946, ch. 356, § 6; reenacted without change, Laws, 1982, ch. 487, § 28]

§ 83-3-115. [Codes, 1942, § 5834-07; Laws, 1946, ch. 356, § 7; reenacted without change, Laws, 1982, ch. 487, § 29]

§ 83-3-117. [Codes, 1942, § 5834-07; Laws, 1946, ch. 356, § 7; reenacted without change, Laws, 1982, ch. 487, § 30]

§ 83-3-119. [Codes, 1942, § 5834-08; Laws, 1946, ch. 356, § 8; reenacted without change, Laws, 1982, ch. 487, § 31]

Editor's Note — Former § 83-3-101 stipulated the purpose of Article 1 of Chapter 3 of Title 83.

Former § 83-3-103 contained definitions applicable to casualty insurance.

Former § 83-3-105 provided for making of casualty insurance rates.

Former § 83-3-107 pertained to filing of rates and rating information.

Former § 83-3-109 provided for rating organizations.

Former § 83-3-111 established the insurance commission fund.

Former § 83-3-113 authorized a rating organization to file application to deviate from established rates.

Former § 83-3-115 pertained to recording and reporting loss and expense experiences.

Former § 83-3-117 authorized the insurance commission to promulgate rules and regulations.

Former § 83-3-119 prohibited the dissemination of false or misleading information.

§ 83-3-121. Rebates prohibited.

No insurance company, or employee thereof, and no broker or agent shall knowingly charge, demand, or receive a premium for any policy of insurance except in accordance with the applicable filing approved in the manner herein provided. No such insurer or employee or agent thereof shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance or after insurance has been affected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance. No insured named in a policy of insurance nor any employee of such insured shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, or reduction of premium, or any special favor or advantage or valuable consideration or inducement. Nothing herein contained shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents, nor as prohibiting any participating insurer from distributing to its policyholders dividends, savings, or the unused or unabsorbed portion of premiums or premium deposits nor as prohibiting any duly licensed agent from advancing an insurance premium for the insured with or without interest thereon subject to the rules and regulations of the Mississippi Department of Insurance.

SOURCES: Codes, 1942, § 5834-09; Laws, 1946, ch. 356, § 9; reenacted without change, Laws, 1982, ch. 487, § 32; Laws, 1987, ch. 422, § 27; reenacted, Laws, 1991, ch. 317, § 12; reenacted without change, Laws, 1998, ch. 456, § 12; Laws, 2000, ch. 377, § 1, eff from and after July 1, 2000.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 83-3-33.

1. In general.

The Commissioner of Insurance improperly denied an application of a farmers' production credit association for an incorporated insurance agency license, where there was no proof that the association would allow rebates, discounts, or other inducements to purchase insurance, as prohibited by this section and § 83-3-33; although income derived from the sale of the policies would contribute to net earnings, distribution of net earnings to the association's stockholders would not violate these sections. Commissioner of Ins. v. Jackson Prod. Credit Ass'n, 377 So. 2d 1047 (Miss. 1979).

2.-5. [Reserved for future use.]

6. Under former § 83-3-33.

Purpose of statute forbidding special inducements in making of insurance contracts was to subserve a public policy intended to promote solvency of insurance companies, to give equal opportunity in cost of insurance to those engaged in business, and to assure equality of opportunity and privilege to all local insurance agents. City of N.Y. Ins. Co. v. Greenwood Int'l Co., 170 Miss. 644, 155 So. 346 (1934).

Contract of insurance being in violation of statute forbidding special inducements, insured held not entitled to recover premiums paid on policies, later canceled, which premiums had not been forwarded to insurance company by agent, on ground parties to illegal contract should not be permitted to recover money paid under the contract. City of N.Y. Ins. Co. v. Greenwood Int'l Co., 170 Miss. 644, 155 So. 346 (1934).

ATTORNEY GENERAL OPINIONS

The statute does not permit an insurance agent to pay an insurance premium for a client and then bill the client for the premium paid plus any finance charges for amounts that are past due to the agent. Dale, Nov. 12, 1999, A.G. Op. #99-0615.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 537, 538.

CJS. 44 C.J.S., Insurance §§ 551, 552.

§§ 83-3-123 through 83-3-129. Repealed.

Repealed by Laws, 1987, ch. 422, § 31, eff from and after January 1, 1988.

§ 83-3-123. [Codes, 1942, § 5834-10; Laws, 1946, ch. 356, § 10; reenacted without change, Laws, 1982, ch. 487, § 33]

§ 83-3-125. [Codes, 1942, § 5834-10; Laws, 1946, ch. 356, § 10; reenacted without change, Laws, 1982, ch. 487, § 34]

§ 83-3-127. [Codes, 1942, § 5834-11; Laws, 1946, ch. 356, § 11; reenacted without change, Laws, 1982, ch. 487, § 35]

§ 83-3-129. [Codes, 1942, § 5834-13; Laws, 1946, ch. 356, § 13; reenacted without change, Laws, 1982, ch. 487, § 36]

Editor's Note — Former § 83-3-123 authorized the insurance commission to conduct hearings on grievances.

Former § 83-3-125 authorized appeals from final decisions or orders of the insurance commission.

Former § 83-3-127 provided for penalties for violations of Article 3 of Chapter 3 of Title 83.

Former § 83-3-129 excepted existing insurance contracts from the provisions of Article 3 of Chapter 3 of Title 83.

ARTICLE 5.

ADVISORY ORGANIZATIONS [REPEALED].

§§ 83-3-201 through 83-3-207. Repealed.

Repealed by Laws 1987, ch. 422, § 32, eff from and after January 1, 1988.

[§ 83-3-201 through § 83-3-207. 5649-21; Laws, 1958, ch. 444, §§ 1-4; reenacted without change, Laws, 1982, ch. 487, §§ 37-40]

ARTICLE 7.

AGENCY REVIEW [REPEALED].

§ 83-3-301. Repealed.

Repealed by Laws 1998, ch. 456, § 13, eff from and after July 1, 1998.

[Laws, 1979, ch. 301, § 46; Laws, 1982, ch. 487, § 41; Laws, 1990, ch. 575, § 1; Laws, 1991, ch. 317, § 13, eff from and after July 1, 1991]

Editor's Note — Former Section 83-3-301 provided for the repeal of §§ 83-3-2 through 83-3-24 and 83-3-121 as of December 31, 1999.

CHAPTER 5

General Provisions Relative to Insurance and Insurance Companies

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GENERAL PROVISIONS

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§ 83-5-1. Concerns subject to department.

All indemnity or guaranty companies, all companies, including those companies defined in Section 83-41-303(n), corporations, partnerships, associations, individuals and fraternal orders, whether domestic or foreign, transacting, or to be admitted to transact, the business of insurance in this state are insurance companies within the meaning of this chapter, and shall be subject to the inspection and supervision of the commissioner.

SOURCES: Codes, 1857, ch. 35, art. 60; 1871, § 2445; 1880, § 1076; 1892, § 2326; 1906, § 2559; Hemingway's 1917, § 5023; 1930, § 5129; 1942, § 5631; Laws, 1910, ch. 103; Laws, 1997, ch. 410, § 2, eff from and after July 1, 1997.

Cross References — Hospital trust to insure against public liability claims not being subject to supervision of insurance commissioner, see § 41-13-107.

Application of definition of "Insurer" in this section to periodic financial examinations of insurers, see § 83-5-203.

Registration and examination of companies writing casualty insurance, ordinary life insurance or health and accident insurance, see §§ 83-6-1 et seq.

Exclusion of burial associations regulated under §§ 83-37-1 et seq. from definition of "insurer" as provided in this section, see § 83-6-1.

Application of definition of "Insurer" in this section to Managing General Agents Act, see § 83-18-103.

Classes of insurance companies, see § 83-19-1.

Exclusion of nonprofit dental service corporations from insurance laws, see § 83-43-7.

JUDICIAL DECISIONS

1. In general.
2. What constitutes business of insurance.

1. In general.

Duty and responsibility of the commissioner of insurance is prescribed primarily for the protection of the policyholders and the public, and the sections relating thereto were not intended to deal with the relation existing between the insurance corporation and its stockholders, or to require the commissioner to concern himself with the internal affairs and details of operation or management. Sanders v. Neely, 197 Miss. 66, 19 So. 2d 424 (1944).

Code 1942, Chapter on Insurance, §§ 5616-5834, regulating insurance companies and prescribing the duties of the commissioner of insurance in regard to the examination thereof, does not abrogate or repeal the common-law right of a stockholder in a domestic insurance corporation to inspect the books and records of the corporation. Sanders v. Neely, 197 Miss. 66, 19 So. 2d 424 (1944).

State can regulate insurance under police power, and prescribe kind of contracts to be made. State v. Alley, 96 Miss. 720, 51 So. 467 (1910); General Accident Fire & Life Assurance Co. v. Walker, 99 Miss. 404, 55 So. 51 (1910).

Statutes regulating insurance liberally construed so as to cover all kinds of insurance. State v. Alley, 96 Miss. 720, 51 So. 467 (1910).

2. What constitutes business of insurance.

General Accident Fire & Life Assurance Co. v. Walker, 99 Miss. 404, 55 So. 51 (1910).

Whether concern is subject to the insurance law is determined by the nature of the business it transacts without regard to its name. State v. Alley, 96 Miss. 720, 51 So. 467 (1910).

Fact that association confines itself to insurance on a particular kind of property does not take it out of the statute. State v. Alley, 96 Miss. 720, 51 So. 467 (1910).

This section [Code 1942, § 5631] indicates a purpose to include in its provisions all concerns doing an insurance business on any kind of plan. State v. Alley, 96 Miss. 720, 51 So. 467 (1910).

Mutual fire insurance company having no capital stock and empowered by its charter to insure property of members only cannot be authorized to do business in this state. Farmers' Mut. Fire Ins. Co. v. Cole, 90 Miss. 508, 43 So. 949 (1907).

Statute includes foreign associations contracting to pay sick and burial benefits in case of death. Fikes v. State, 87 Miss. 251, 39 So. 783 (1906).

RESEARCH REFERENCES

ALR. Financing of insurance premiums as constituting "business of insurance" within § 2 of McCarran-Ferguson Act (15 USCS § 1012), excluding application of Truth in Lending Act (15 USCS §§ 1601 et seq.) to such financing. 51 A.L.R. Fed. 743.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 67 et seq.

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-5-3. All companies to submit to all laws of state.

Every insurance company, foreign or domestic, that qualifies to do business in the State of Mississippi shall be required to execute an agreement to be bound by the statute laws of the State of Mississippi pertaining to the periods of limitation prescribed by the statute law of this state.

The insurance commissioner is hereby required, as a condition precedent to authorizing any insurance company to qualify and operate under the laws of this state or to do business in this state, to require said companies to execute an agreement binding said company to conform to and to be bound and regulated by the statute laws of this jurisdiction as defined in the first paragraph.

For purposes of the administration of this section, insurance companies shall consist of all types of insurance companies, both domestic and foreign, that operate in this jurisdiction, including stock companies, mutuals, and fraternal societies and organizations when such fraternal society or organization engages in the insuring of its members or other persons.

SOURCES: Codes, 1942, § 5631.5; Laws, 1956, ch. 343, §§ 1-4.

RESEARCH REFERENCES

ALR. Insurer's failure to pay amount of admitted liability as precluding reliance on statute of limitations. 41 A.L.R.3d 1111.

Liability of insurer, or insurance agent or adjuster, for infliction of emotional distress. 6 A.L.R.5th 297.

What constitutes "suit" triggering insurer's duty to defend environmental claims—state cases. 48 A.L.R.5th 355.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 63 et seq.

§ 83-5-5. Terms defined.

When consistent with the context and not obviously used in a different sense, the term "company" or "insurance company", as used in this chapter, includes all corporations, associations, partnerships, or individuals engaged as principals in the business of insurance or guaranteeing the obligations of others.

The word "domestic" designates those companies or other insurers incorporated or formed in this state; and the word "foreign", when used without limitation, includes all those formed by authority of any other state or government, and whose home office is not located in this state.

A contract of insurance is an agreement by which one party for a consideration promises to pay money or its equivalent, or to do some act of value to the assured, upon the destruction, loss, or injury of something in which the assured or other party has an interest, as an indemnity therefor.

SOURCES: Codes, 1906, §§ 2562, 2563; Hemingway's 1917, §§ 5027, 5028; 1930, §§ 5130, 5131; 1942, §§ 5632, 5633.

Cross References — Hospital trust to insure against public liability claims not constituting contract of insurance, see § 41-13-107.

Definition of life insurance companies, see § 83-7-1.

JUDICIAL DECISIONS

1. In general.

The Mississippi Municipal Liability Plan does not fit within the definition of insurance under § 83-5-5, which is general liability insurance sufficient to waive sovereign immunity pursuant to § 21-15-6, but instead is self-insurance insufficient to waive sovereign immunity. Morgan v. City of Ruleville, 627 So. 2d 275 (Miss. 1993).

Corporate administrator of homeowner's warranty program was neither warrantor nor insurer under homeowner's warranty program where it had not agreed to guarantee obligations of any other party involved in program, and, irrespective of any representations which may have been made to plaintiffs by their builders, plaintiffs did not assert that any representative of corporate administrators had made any statements or representations of any sort to plaintiffs. Rather, corporate administrator was administrator of program under which builder issued written guaranty and defendant insurance company underwrote major construction defect policies for certain years; it therefore follows that while corporate administrator may be subjected to liability for its activities relative to its administration of program, it could have no liability to plaintiffs for their claims concerning failure to pay policy benefits. Burley v. Homeowners Warranty Corp., 773 F. Supp. 844 (S.D. Miss. 1990), aff'd, 936 F.2d 569 (5th Cir. 1991).

Service of process upon foreign insurance company, see National Sur. Co. v. Board of Supvrs., 120 Miss. 706, 83 So. 8 (1919).

Statutes liberally construed to cover all kinds of insurance. State v. Alley, 96 Miss. 720, 51 So. 467 (1910).

RESEARCH REFERENCES

ALR. What is an "insurance company" under § 831(a)(1) of Internal Revenue Code of 1954 (26 USCS § 831(a)(1)), or its predecessors, providing for tax on insurance companies other than life or mutual. 49 A.L.R. Fed. 452.

Am Jur. 43 Am. Jur. 2d, Insurance § 8.

CJS. 44 C.J.S., Insurance §§ 76-80.

§ 83-5-7. Situs of contract.

It shall be unlawful for any company to make any contract of insurance upon or concerning any property or interest or lives in this state, or with any resident thereof, or for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of such insurance unless and except as authorized under the provisions of this chapter. All contracts of insurance on property, lives, or interests in this state shall be deemed to be made therein.

SOURCES: Codes, 1906, § 2563; Hemingway's 1917, § 5028; 1930, § 5131; 1942, § 5633.

JUDICIAL DECISIONS

1. In general.
2. What law governs.

1. In general.

Mississippi statutory scheme pertaining to insurance carriers and agents, embodies in §§ 83-5-7, 83-17-103 [repealed], 83-17-105 [repealed], and 97-23-31, allegedly violated by defendants, met 3 criteria for laws to regulate "business of insurance," being (1) whether practice has effect of transferring or spreading a policy holder's risk, (2) whether practice is an integral part of policy relationship between insurer and insured, and (3) whether practice is limited to entities within insurance industry; therefore there was possibility of a valid state law claim based on Mississippi insurance regulatory statutes and/or fraud in the inducement against one of defendants who was insurance agent; accordingly, defendant was not nominal or fraudulently joined party for purposes of removal jurisdiction. Smith v. Arkansas Blue Cross & Blue Shield, 781 F. Supp. 1159 (N.D. Miss. 1991).

Insurance policies providing for life income for assured were annuity policies and not life insurance policies within the purview of this section [Code 1942, § 5633]. Hamilton v. Penn Mut. Life Ins. Co., 196 Miss. 345, 17 So. 2d 278 (1944).

Insurance policies providing for monthly income to assured for life were not life insurance policies, within the purview of statute providing that a policy of life insurance shall not be issued or delivered in this state until the form has been approved and filed by the insurance commissioner, but were annuity policies, notwithstanding that they also provided for payment to another of the balance, if any, of the single premium remaining at the death of assured. Hamilton v. Penn Mut. Life Ins. Co., 196 Miss. 345, 17 So. 2d 278 (1944).

A statute calling for a foreign corporation residing outside the state to designate a person within the state as its agent for service of process in the state in return for the privilege of doing business within the state, is constitutional, and the designation of such agent is a voluntary act by which the corporation consents to be sued in the state; and such consent, when executed in conformity with a valid state statute, extends to any court sitting in the state which applies the laws of the state, including federal courts, and therefore constitutes consent to be sued in federal court in the state and supplants the immunity conferred by rules governing venue. Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U.S. 165, 60 S. Ct. 153, 84 L. Ed. 167, 128 A.L.R. 1437 (1939).

2. What law governs.

Corporation had not carried its burden of showing that application of New York law, as provided in the policy, would have been unreasonable or unjust because there was no showing that the fact that the insurer, a United Kingdom entity whose most substantial relationship in the United States was with New York, where it maintained its agent for service of process and its United States Trust Fund account, did not constitute a reasonable basis for the choice of New York law to govern its marine insurance policy providing hull coverage to an ocean going vessel expected to travel up to 100 miles offshore; nor was there any showing that New York law conflicted with any fundamental purpose of maritime law because to hold that New York law, because it applied uberrimae fidei, conflicted with any fundamental purpose of maritime law, would be to run counter to the great weight of authority which embraced that doctrine in maritime insurance cases. Moreover although the corporation argued that application of New York law would be contrary to fundamental policy of Mississippi, the appellate court found that to the extent that Miss. Code § 83-5-7 impliedly addressed Mississippi conflict of law rules, it was not controlling because in the instant marine insurance case it was maritime, not state, conflict of law rules that governed; therefore, the appellate court's answer to the certified question was that either the general maritime law doctrine of uberrimae fidei or New York law, rather than Mississippi law, governed the parties' rights under the instant marine insurance policy. Great Lakes Reinsurance (UK) PLC v. Durham Auctions Inc., 585 F.3d 236 (5th Cir. 2009).

A life insurance policy issued in Mississippi is governed by Mississippi law. Franklin Life Ins. Co. v. Critz, 109 F.2d 417 (5th Cir. 1940), cert. denied, 309 U.S. 684, 60 S. Ct. 724, 84 L. Ed. 1027 (1940).

Where on former appeals, terminating in a decision by the federal supreme court, the point raised by demurrer to insurer's plea involved the question whether a provision in a fidelity bond requiring any claim thereunder to be made within 15 months after the termination of the suretyship, was subject to the law of Tennessee where the contract was made at a time when the insured was then located in

Tennessee, or subject to the laws of Mississippi, to which insured had removed and where the defalcation occurred, and resulted in a determination that the laws of Tennessee governed, such determination did not preclude subsequent litigation as to the effect of such provision under Tennessee decisions as being a condition precedent to liability of the insurer or merely a postponement of the right to sue. Hartford Accident & Indem. Co. v. Delta & Pine Land Co., 189 Miss. 496, 195 So. 667 (1940), cert. denied, appeal dismissed, 311 U.S. 610, 61 S. Ct. 25, 85 L. Ed. 387 (1940).

Group policy performable and delivered in Alabama held subject to Alabama law, although insured employee was resident of Mississippi, had never been in Alabama, and employer operated its busses only in Mississippi. Protective Life Ins. Co. v. Lamarque, 180 Miss. 243, 177 So. 15 (1937).

A state may not, without violating the due process clause of the federal constitution, apply to an employee's fidelity insurance contract, entered into in another state, its own statute annulling any contractual limitation of the time for giving notice of claim, although the default occurred after the removal of the insured and his defaulting employee to the state in which the action is brought. Hartford Accident & Indem. Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A.L.R. 928 (1934), reh'g denied, 292 U.S. 607, 54 S. Ct. 772, 78 L. Ed. 1468 (1934).

Under this section [Code 1942, § 5633], all contracts of insurance on property situated in this state, regardless of where the contracts were made, are declared to be Mississippi contracts, and are construed according to the laws of this state, regardless of any provisions in the contracts to the contrary. Stuyvesant Ins. Co. v. A.C. Smith Motor Sales Co., 135 Miss. 585, 99 So. 575 (1924).

Life insurance policy, issued on the life of a resident of this state, must, in view of this section [Code 1942, § 5633], be construed according to the laws of this state, although made in another state, notwithstanding a provision in the policy to the contrary. Fidelity Mut. Life Ins. Co. v. Miazza, 93 Miss. 18, 46 So. 817, 136 Am. St. R. 534 (1908).

RESEARCH REFERENCES

ALR. Insurable interest predicated upon invalid or unenforceable contract. 9 A.L.R.2d 181.

Condemnation proceedings as affecting insurable interest of property owner. 29 A.L.R.2d 888.

Validity of assignment of life insurance policy to one who has no insurable interest in insured. 30 A.L.R.2d 1310.

Insurable interest of husband or wife in other's property. 27 A.L.R.2d 1059.

Conflict of laws in determination of coverage under automobile liability insurance policy. 110 A.L.R.5th 465.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 23 et seq.

CJS. 44 C.J.S., Insurance §§ 41 et seq.

§ 83-5-9. Business to be conducted in corporate name.

Every insurance company, foreign or domestic, shall conduct its business in this state in its own proper and corporate name; and the policies and contracts of insurance issued by it shall be headed or entitled only by its proper and corporate name. When any such company publishes its assets, it shall, in the same connection and with equal conspicuousness, publish its liabilities, computed on the basis allowed for its annual statements; and any publication purporting to show its capital shall exhibit only the amount of such capital as has actually been paid in cash. Any company or any agent thereof issuing or circulating advertisements in violation of this section shall be punished by a fine of not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00).

SOURCES: Codes, 1880, § 1088; 1892, § 2329; 1906, § 2570; Hemingway's 1917, § 5035; 1930, § 5132; 1942, § 5634.

Cross References — Advertisement of amount of capital, see § 83-19-61.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 74, 78.

CJS. 44 C.J.S., Insurance § 124.

§ 83-5-11. Legal process.

When legal process is served upon the commissioner as attorney for an insurance company, he shall forthwith notify the company of such service by letter prepaid and directed to its secretary or, in the case of a foreign country, to its resident manager, if any, in the United States, and shall, within two (2) days after such service, forward in the same manner a copy of the process served on him to the secretary or manager or to such person as may have been previously designated by the company by written notice filed in the office of the commissioner. The failure of the commissioner to notify the company shall not affect the validity of such service but shall subject him to liability on his bond for such damages as the company shall suffer thereby. As a condition of a valid and effectual service and of the duty of the commissioner in the premises, the plaintiff in such process shall pay to the commissioner at the time of service thereof the sum of Twenty-five Dollars ($25.00), which the plaintiff shall recover as taxable costs if he prevails in his suit. The commissioner shall keep a record of all such proceedings, that shall show the day and hour of service.

SOURCES: Codes, 1906, § 2569; Hemingway's 1917, § 5034; 1930, § 5133; 1942, § 5635; Laws, 1977, ch. 329, § 1; ch. 398, § 1; Laws, 1985, ch. 433, § 8; Laws, 1993, ch. 330, § 1; Laws, 2003, ch. 370, § 1, eff from and after July 1, 2003.

Cross References — Service of process upon agent of trustees or attorneys in fact, see § 13-3-41.

Fees for commissioner, see § 83-5-73.

Appointment of commissioner as attorney for service of process for foreign insurance companies, see § 83-21-1.

Appointment of commissioner as agent for service of process under reciprocal insurance contracts, see § 83-33-7.

Service of process upon commissioner in suits to enforce liens, see § 85-7-195.

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 493 et seq.

§ 83-5-13. Laws applicable.

The general provisions of law relative to the powers, duties, and liabilities of corporations shall apply to all incorporated domestic insurance companies, so far as such provisions are pertinent and not in conflict with other provisions of law relative to such companies, or with their charters. All insurance companies in this state shall be governed by this chapter, anything in their special charters to the contrary notwithstanding.

SOURCES: Codes, 1892, § 2330; 1906, § 2571; Hemingway's 1917, § 5036; 1930, § 5134; 1942, § 5636.

Cross References — Laws applicable to foreign insurance companies, see § 83-21-7.

Exclusion of fraternal societies from insurance laws, see § 83-29-7.

RESEARCH REFERENCES

ALR. Conflict of laws in determination of coverage under automobile liability insurance policy. 110 A.L.R.5th 465.

Am Jur. 43 Am. Jur. 2d, Insurance § 63.

§ 83-5-15. License fees for each class of business.

No insurance company admitted to do business in the state shall be authorized to transact more than one (1) class or kind of insurance, unless it shall pay the license fees for each class and have the requisite capital for each business engaged in. A life insurance company may do an accident business and a fire insurance company may transact insurance as prescribed in Section 83-19-1, subsections (a), (b), and (g), with the payment of the largest license fees provided for any one (1) business done. No insurance company or other insurer shall be required to pay license fees amounting in the aggregate to more than Three Hundred and Fifty Dollars per annum.

SOURCES: Codes, 1906, § 2611; Hemingway's 1917, § 5074; 1930, § 5135; 1942, § 5637.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 63.

CJS. 44 C.J.S., Insurance §§ 118-120, 131, 132.

§ 83-5-17. Revocation of license; administrative fine.

The Commissioner of Insurance may, after notice and a hearing, revoke the authority of a domestic or foreign insurance company or impose an administrative fine, or both, if it violates or neglects to comply with any provision of law obligatory on it, and whenever in the opinion of the commissioner its condition is unsound, or its assets above its liabilities, exclusive of capital and inclusive of unearned premiums, are less than the amount of its original capital or required unimpaired funds. Such administrative fine shall not exceed Five Thousand Dollars ($5,000.00) per violation and shall be deposited into the special fund in the State Treasury designated as the "Insurance Department Fund."

SOURCES: Codes, 1906, § 2612; Hemingway's 1917, § 5075; 1930, § 5136; 1942, § 5638; Laws, 1997, ch. 410, § 3, eff from and after July 1, 1997.

Cross References — Power of commissioner to suspend or revoke certificates of authority, see § 83-1-29.

Revocation of license for failure to comply with insurance laws, see § 83-5-83.

Audit of annual financial statements of insurers, see §§ 83-5-101 et seq.

Application of this section to suspension, revocation or refusal of license for failure to submit to examination by commissioner, see § 83-5-207.

Revocation of certificate of authority for impairment of capital, see § 83-19-57.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance Form 11.1 (petition or application by insurance company against state commissioner of insurance to enjoin further proceedings to suspend or revoke insurance company's certificate of authority).

CJS. 44 C.J.S., Insurance § 139.

§ 83-5-19. Sale of stock regulated.

(1) No insurance company, corporation, or association of individuals shall sell or offer to sell stock in any insurance company or any insurance agency company, or permit the same to be sold or offered for sale by any firm, company, corporation, or individual to any person or persons in Mississippi until the same secures a permit or license from the insurance commissioner. Before such permit shall be granted for the sale of such stock in this state, directly or indirectly, by itself or by any firm, person, or corporation, such insurance company, corporation, or association of individuals shall file with the insurance commissioner a duly certified copy of its articles of incorporation and designate the insurance commissioner attorney for the service of legal process, as now provided by law for other insurance companies or corporations, and shall file with the insurance commissioner such other information, with reference to its proposed plans of transacting business in Mississippi, as the insurance commissioner may require. If, after an examination of such articles of incorporation, and upon being otherwise satisfied that the business proposed to be transacted in the state is proper and right under the laws of Mississippi, then the insurance commissioner shall issue the same a permit to sell its stock in the State of Mississippi.

(2) Permit—Two Hundred Dollars $200 paid for examination:

Every such insurance company, corporation, or association of individuals shall pay to the insurance commissioner the sum of Two Hundred Dollars ($200.00) for his services in making the examination and issuing the permit provided by the preceding subsection; and every agent, person, or corporation offering the stock for sale shall pay to the said commissioner the sum of Ten Dollars ($10.00). Said sums shall be paid into the state treasury as other taxes collected by him. The license shall only permit such sales to be made upon plan submitted to the insurance commissioner, and at the prices and commissions designated in such license.

(3) Failure to obtain permit:

For failure or refusal to obtain authority provided for herein, such insurance company, corporation, or association of individuals so failing or refusing to obtain such permit shall be forever barred from admission to this state to transact insurance. No person, firm, or corporation shall in any manner represent, as agent or otherwise, such insurance company, corporation, or association of individuals for the sale of stock, or for any other purpose, before securing the permit herein provided.

(4) Sale of insurance and stock together prohibited:

No company, corporation, or other person within the terms of this section shall sell such stock and insurance together, or one as an inducement to the sale or purchase of the other and, for any violation of this section, shall be subject to the same penalties herein otherwise imposed for the violation of any provision of this chapter.

(5) Commissioner given power of trial justice:

For the prosecutions herein provided, the insurance commissioner shall have the powers of a trial justice, or he, or any other person cognizant of the facts, may make affidavit, returnable before a justice of the peace, whose duty it shall be to proceed with the trial as provided by law for any other violation thereof.

SOURCES: Codes, Hemingway's 1917, §§ 5149, 5150, 5151, 5153, 5154; 1930, § 5137; 1942, § 5639; Laws, 1912, ch. 172.

Editor's Note — Pursuant to Miss. Constn., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Notification of company when process is served on commissioner as its attorney, see § 83-5-11.

Issuance of stock by domestic insurance companies, see § 83-19-9.

Procedure for sale of stock issued by domestic insurance companies, see §§ 83-19-35 et seq.

Appointment by foreign insurance company of commissioner as agent for service of process, see § 83-21-1.

Appointment by fraternal societies of commissioner as attorney for service of process, see § 83-29-31.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 63.

§ 83-5-21. License revoked if judgments not paid.

If a judgment shall be rendered by any court in this state against any insurance company, and such judgment shall not be paid and satisfied within ninety (90) days after the same shall have become final, it shall be the imperative duty of the commissioner, immediately upon being advised that such judgment has not been paid or satisfied within the time named, to revoke any and every authority, license, or certificate granted to such insurance company, or any agent thereof, to transact any business in this state until again duly licensed. In case of such revocation, no renewal license or certificate of authority to transact business in this state shall be granted to such insurance company for three (3) years after such revocation, and not then unless such judgment has been satisfied. Whenever such license shall be revoked, the commissioner shall give notice of such revocation by mail to every agent of such insurance company who shall have obtained any certificate of authority to transact business for such insurance company in this state.

SOURCES: Codes, 1906, § 2668; Hemingway's 1917, § 5134; 1930, § 5138; 1942, § 5640; Laws, 1912, ch. 228.

Cross References — Remedy of judgment creditor of fraternal societies, see § 83-29-63.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

CJS. 44 C.J.S., Insurance §§ 124, 129, 130.

§ 83-5-23. Reserves required.

Every company transacting a fire, marine, inland, accident or casualty, surety or fidelity, or other insurance business, except life, in this state shall be required to set aside as a legal reserve to protect the holders of its policy contracts in this state the pro rata unearned portion of the premium paid for such contract, to be held until termination of such contracts, and a reserve for unpaid losses and loss adjustment expenses for incurred claims both reported and unreported. Life insurance companies shall set aside as a reserve sufficient of the premium paid each year which, if invested at four percent (4%) interest, will pay the amount of insurance contracted for at maturity of the contract.

SOURCES: Codes, 1906, § 2614; Hemingway's 1917, § 5077; 1930, § 5139; 1942, § 5641; Laws, 1991, ch. 419, § 1, eff from and after July 1, 1991.

Cross References — Reserve liabilities of life insurance companies, see §§ 83-7-21 et seq.

Reserves required of mutual companies, see § 83-31-31.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 71.

CJS. 44 C.J.S., Insurance §§ 159-161, 174.

§ 83-5-25. Certain insurance prohibited.

No life insurance company, mutual aid association, fraternal benefit society, order, or association, or stipulated premium companies operating in this state shall hereafter be permitted to issue policies, certificates, or contracts to policyholders or members providing for the establishment of its policyholders or members into divisions and classes for the purpose of providing for the payment of benefits from special funds created for such purpose to the oldest member of the division and class, or to the member of the division and class whose policy has been in force the longest period of time, upon the death of a member in such division and class, except as hereinafter provided.

Any life insurance company, mutual aid association, fraternal benefit society, order, or association, or stipulated premium companies heretofore operating on this plan in this state may continue so to do upon condition that such life insurance company, fraternal benefit society, mutual aid association, or stipulated premium companies shall not hereafter establish its policyholders or members into divisions or classes other than the divisions or classes actually containing subsisting policies or certificates on May 25, 1936.

Any life insurance company, mutual aid association, fraternal benefit society, order, or association, or stipulated premium companies violating any of the provisions of this section shall be subject to the revocation of its license to transact business in this state.

SOURCES: Codes, 1942, § 5642; Laws, 1936, ch. 322.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

CJS. 44 C.J.S., Insurance § 139.

§ 83-5-27. Discrimination through fictitious grouping prohibited.

No stock, mutual, reciprocal, or other insurer shall make available to any resident or group of residents of this state, through any rating plan or form, fire, inland marine, casualty or surety insurance, or type or combination thereof, whether by master policy, series of policies, certificates of insurance, or otherwise, to any person, firm, corporation, or association of individuals, any preferred rate or premium based upon any fictitious grouping of such person, firm, corporation, or association of individuals, which fictitious grouping is hereby defined and declared to be any grouping by way of membership, license, franchise, agreement, or any other method or means; provided, however, that the foregoing shall not apply to life, accident, health, and hospitalization insurance.

SOURCES: Codes, 1942, § 5649-14; Laws, 1958, ch. 445.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 74.

CJS. 44 C.J.S., Insurance § 551.

§ 83-5-28. Cancellation, reduction in coverage, or nonrenewal of coverage; notice; inclusion in policies issued or renewed after June 30, 1989.

(1) A cancellation, reduction in coverage or nonrenewal of liability insurance coverage, fire insurance coverage or single premium multiperil insurance coverage is not effective as to any coverage issued or renewed after June 30, 1989, unless notice is mailed or delivered to the insured and to any named creditor loss payee by the insurer not less than thirty (30) days prior to the effective date of such cancellation, reduction or nonrenewal. This section shall not apply to nonpayment of premium unless there is a named creditor loss payee, in which case at least ten (10) days' notice is required.

(2) The provisions of subsection (1) shall be incorporated into each liability, fire and multiperil policy issued or renewed after June 30, 1989; and if such provisions are not expressly stated in the policy, such provisions shall be deemed to be incorporated in the policy.

SOURCES: Laws, 1989, ch. 410, § 1; Laws, 2006, ch. 480, § 1, eff from and after July 1, 2006.

JUDICIAL DECISIONS

1. Strict compliance.
2. Effect on general law of agency.
3. Statutory construction.

1. Strict compliance.

Mississippi Supreme Court would have required plaintiff insurer to give notice of a reduction in coverage embodied in the second policy directly to defendant insured in strict compliance with Miss. Code Ann. § 83-5-28 (1972) in order to effect a cancellation or a reduction in coverage. The insurer contended that it complied with this legal requirement when its agent gave notice of the policy change to the agent who purchased the policy at the behest of the insured; however, this contention ran afoul of the specific statutory requirement that notice be given by the insurer to the insured. Great Am. Ins. Co. v. Lowry Dev., LLC, 524 F. Supp. 2d 778 (S.D. Miss. 2007).

2. Effect on general law of agency.

Insured developer was bound by a renewal of a builder's risk policy that included a wind exclusion, as to which its agent failed to give it notice, because Miss. Code Ann. § 83-5-28(1) did not prevent notices of policy changes from being sent to an agent or alter state law, which deemed notification to an agent as adequate notice to the principal. Great Am. Ins. Co. v. Lowry Dev. LLC, 576 F.3d 251 (5th Cir. 2009).

3. Statutory construction.

Under the statutory construction principles in Miss. Code Ann. § 1-3-65, the term "insured" in Miss. Code Ann. § 83-

5-28 refers to a person involved in a contract with an insurer; the term does not have a technical meaning that would block the common interpretation that authorizing a person to act in a certain way also authorizes a person's agents to do so. Great Am. Ins. Co. v. Lowry Dev. LLC, 576 F.3d 251 (5th Cir. 2009).

RESEARCH REFERENCES

Practice References. Business Law Monographs, Volume IN2 — Casualty and Liability Insurance (Matthew Bender).

§ 83-5-29. Insurance business practices regulated.

The purpose of Sections 83-5-29 through 83-5-51 is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or deceptive practices, and by prohibiting the trade practices so defined or determined.

SOURCES: Codes, 1942, § 5649-01; Laws, 1956, ch. 329, § 1.

Cross References — Application of this section to sponsors of legal expense insurance plans, see § 83-49-21.

Applicability of this section to risk retention groups, see § 83-55-7.

RESEARCH REFERENCES

ALR. Provisions of insurance company's contract with independent insurance agent restricting competitive placements by agent as illegal restraint of trade under state law. 42 A.L.R.4th 1072.

Am Jur. 43 Am. Jur. 2d, Insurance § 63.

§ 83-5-30. Notice of withdrawal, cancelation, or failure to renew insurance; penalties.

Any insurer selling property and casualty insurance shall not withdraw, cancel or fail to renew any line of insurance or class of business without giving notice in writing sixty (60) days in advance to the Commissioner of Insurance. Any failure to give notice may result in a fine of up to Two Thousand Five Hundred Dollars ($2,500.00) in the discretion of the Commissioner of Insurance.

SOURCES: Laws, 1988, ch. 468, eff from and after July 1, 1988.

§ 83-5-31. Definitions.

When used in Sections 83-5-29 through 83-5-51:

(a) "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, mutual, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, solicitors, brokers, and adjusters.

(b) "Commissioner" shall mean the commissioner of insurance of this state.

SOURCES: Codes, 1942, § 5649-02; Laws, 1956, ch. 329, § 2.

Cross References — Application of this section to sponsors of legal expense insurance plans, see § 83-49-21.

Applicability of this section to risk retention groups, see § 83-55-7.

§ 83-5-33. Unfair methods of competition and deceptive practices prohibited.

No person shall engage in this state in any trade practice which is defined in Sections 83-5-29 through 83-5-51 as, or determined pursuant to said sections to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

SOURCES: Codes, 1942, 5649-03; Laws, 1956, ch. 329, § 3.

Cross References — Application of this section to sponsors of legal expense insurance plans, see § 83-49-21.

Applicability of this section to risk retention groups, see § 83-55-7.

JUDICIAL DECISIONS

1. In general.

Plaintiffs, applicants for auto and homeowners insurance, could not bring a private cause of action under Miss. Code Ann. § 83-5-33. Wells v. Shelter Gen. Ins. Co., 217 F. Supp. 2d 744 (S.D. Miss. 2002).

There is no provision for private civil action in § 83-5-33. Watson v. First Commonwealth Life Ins. Co., 686 F. Supp. 153 (S.D. Miss. 1988).

Evidence amply supported a finding of liability for tortious interference with contractual rights under §§ 83-5-33, 83-5-35(a), and 83-5-37, based upon the unfair insurance competition practice of "twisting," which is misrepresentation or misstatement of fact, or incomplete comparison of policies, to induce an insured to give up a policy in one company for the purpose of taking insurance in another, where it was adequately shown that there were wrong ages of insureds on the defendant insurer's policies, which corresponded to the insureds' ages on the plaintiff insurer's policies, written two to three years earlier, that no notice was sent by defendant insurer to plaintiff insurer that defendant was replacing plaintiff's policies with its own, as required by an insurance regulation, and that defendant insurer's agents did not tell plaintiff insurer's policyholders about vested rights in their existing policies. Protective Serv. Life Ins. Co. v. Carter, 445 So. 2d 215 (Miss. 1983).

RESEARCH REFERENCES

ALR. Implied warranty coverage for service transactions under state consumer protection and deceptive trade statutes. 72 A.L.R.4th 282.

Constitutional right to jury trial in cause of action under state unfair or deceptive trade practices law. 54 A.L.R.5th 631.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 74, 78.

31 Am. Jur. Proof of Facts 2d 323, Insurer's Breach of Covenant of Good Faith and Fair Dealing-First-Party Claims.

CJS. 44 C.J.S., Insurance §§ 139, 551.

§ 83-5-35. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(a) **Misrepresentations and false advertising of policy contracts.** — Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued, or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon; or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies; or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates; or using any name or title of any policy or class of policies misrepresenting the true nature thereof; or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(b) **False information and advertising generally.** — Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

(c) **Defamation.** — Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false and maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(d) **Boycott, coercion and intimidation.** — Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(e) **False financial statements.** — Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer, with intent to deceive.

Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report or file, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(f) **Stock operations and insurance company advisory board contracts.** — Issuing or delivering, or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any corporation, or securities, or any special or any insurance company advisory board contracts or other contracts of any kind promising returns and profit as an inducement to insurance.

(g) **Unfair discrimination.** — (i) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(ii) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(iii) Any violation of Section 83-71-7, 83-71-57 or 83-71-107.

(h) **Designation of agent, solicitor, or insurer.** — Requiring as a condition precedent to the purchase or the lending of money upon the security of real or personal property that any insurance covering such property or liability arising from the ownership, maintenance, or use thereof, to be procured by or on behalf of the vendee or by borrower in connection with such purchase or loan, be so procured through any particular person, agent, solicitor, or in any particular insurer.

This section shall not prevent the reasonable exercise by any such vendor or lender of his right to approve or disapprove the insurer selected to underwrite the insurance, and to determine the adequacy of the insurance offered.

(i) Any violation of Sections 83-3-33 and 83-3-121, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 5649-04; Laws, 1956, ch. 329, § 4; Laws, 2010, ch. 455, § 25, eff from and after July 1, 2010.

Editor's Note — Section 83-3-33, referred to in item (i) of this section, was repealed by Laws, 1987, ch. 422, § 30, effective January 1, 1988.

Amendment Notes — The 2010 amendment redesignated (g)(1) and (2) as (g)(i) and (ii), added (g)(iii), and made a minor stylistic change.

Cross References — Procedure as to unfair methods of competition and unfair practices which are not defined in this section, see § 83-5-45.

Audit of annual financial statements of insurers, see §§ 83-5-101 et seq.

Prohibition of use of name of Mississippi Life and Health Insurance Guaranty Association in insurance advertisements see § 83-23-235.

Violating this section constituting grounds for revocation, suspension or denial or license for legal expense insurance, see § 83-49-11.

Application of this section to sponsors of legal expense insurance plans, see § 83-49-21.

Applicability of this section to risk retention groups, see § 83-55-7.

JUDICIAL DECISIONS

1. In general.

Claim by employee covered under employer's health insurance plan that insurer tortiously breached contract with employee by refusing to pay for daughter's eye surgery was preempted by ERISA, and attempt to characterize action as based on state "twisting statute" (§ 83-5-35) would not overcome preemption. Perkins v. Time Ins. Co., 898 F.2d 470 (5th Cir. 1990).

Miss Code Annotated § 83-5-33 does not provide for private civil actions, and no right of civil action is implied. Watson v. First Commonwealth Life Ins. Co., 686 F. Supp. 153 (S.D. Miss. 1988).

Evidence amply supported a finding of liability for tortious interference with contractual rights under §§ 83-5-33, 83-5-35(a), and 83-5-37, based upon the unfair insurance competition practice of "twisting," which is misrepresentation or misstatement of fact, or incomplete comparison of policies, to induce an insured to give up a policy in one company for the purpose of taking insurance in another, where it was adequately shown that there were wrong ages of insureds on the defendant insurer's policies, which corresponded to the insureds' ages on the plaintiff insurer's policies, written two to three years earlier, that no notice was sent by defendant insurer to plaintiff insurer that defendant was replacing plaintiff's policies with its own, as required by an insurance regulation, and that defendant insurer's agents did not tell plaintiff insurer's policyholders about vested rights in their existing policies. Protective Serv. Life Ins. Co. v. Carter, 445 So. 2d 215 (Miss. 1983).

RESEARCH REFERENCES

ALR. Doctrine of unconscionability as applied to insurance contracts. 86 A.L.R.3d 862.

Propriety of automobile insurer's policy of refusing insurance, or requiring advanced rates, because of age, sex, residence, or handicap. 33 A.L.R.4th 523.

Failure to disclose terminal illness as basis for life insurer's avoidance of high-risk, high-premium policy requiring no health warranties or proof of insurability. 42 A.L.R.4th 158.

Provisions of insurance company's contract with independent insurance agent restricting competitive placements by agent as illegal restraint of trade under state law. 42 A.L.R.4th 1072.

Implied warranty coverage for service transactions under state consumer protection and deceptive trade statutes. 72 A.L.R.4th 282.

Coverage of insurance transactions under state consumer protection statutes. 77 A.L.R.4th 991.

Insurer's duty, and effect of its failure, to provide insured or payee with copy of policy or other adequate documentation of its terms. 78 A.L.R.4th 9.

Constitutional right to jury trial in cause of action under state unfair or deceptive trade practices law. 54 A.L.R.5th 631.

Waiver of estoppel of insurer on basis of statements of omissions in promotional, illustrative, or explanatory materials given to insured. 63 A.L.R.5th 427.

What constitutes bad faith on part of insurer rendering it liable for statutory penalty imposed for bad faith in failure to pay, or delay in paying, insured's claim — Particular grounds for denial of claim: matters relating to policy. 116 A.L.R.5th 247.

What constitutes bad faith on part of insurer rendering it liable for statutory penalty imposed for bad faith in failure to pay, or delay in paying, insured's claim — Particular conduct of insurer. 115 A.L.R.5th 589.

What constitutes bad faith on part of insurer rendering it liable for statutory penalty imposed for bad faith in failure to pay, or delay in paying, insured's claim-Particular grounds for denial of claim: risks, causes, and extent of loss, injury, disability, or death. 123 A.L.R.5th 259.

Financing of insurance premiums as constituting "business of insurance" within § 2 of McCarran-Ferguson Act (15 USCS § 1012), excluding application of Truth in Lending Act (15 USCS §§ 1601 et seq.) to such financing. 51 A.L.R. Fed. 743.

"Redlining," consisting of denial of home loans or insurance coverage in certain neighborhoods, as discrimination in violation of §§ 804 and 805 of Fair Housing Act (42 USCS §§ 3604, 3605). 73 A.L.R. Fed. 899.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 74, 78.

29 Am. Jur. Trials 481, Defense of a First-Party Extra-Contract Claims Action Against a Life, Health and Accident Insurer.

20 Am. Jur. Proof of Facts 2d 59, Insured's "Reasonable Expectations" as to Coverage of Insurance Policy.

31 Am. Jur. Proof of Facts 2d 323, Insurer's Breach of Covenant of Good Faith and Fair Dealing-First-Party Claims.

49 Am. Jur. Proof of Facts 2d 1, Fire Insurer's Bad Faith in Responding to Claim by Insured.

CJS. 44 C.J.S., Insurance §§ 139, 551.

§ 83-5-37. Power of commissioner.

The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by Section 83-5-33.

SOURCES: Codes, 1942, § 5649-05; Laws, 1956, ch. 329, § 5.

Cross References — Application of this section to sponsors of legal expense insurance plans, see § 83-49-21.

Applicability of this section to risk retention groups, see § 83-55-7.

JUDICIAL DECISIONS

1. In general.

Evidence amply supported a finding of liability for tortious interference with contractual rights under §§ 83-5-33, 83-5-35(a), and 83-5-37, based upon the unfair insurance competition practice of "twisting," which is misrepresentation or misstatement of fact, or incomplete comparison of policies, to induce an insured to give up a policy in one company for the purpose of taking insurance in another, where it was adequately shown that there were wrong ages of insureds on the defendant insurer's policies, which corresponded to the insureds' ages on the plaintiff insurer's policies, written two to three years earlier, that no notice was sent by defendant insurer to plaintiff insurer that defendant was replacing plaintiff's policies with its own, as required by an insurance regulation, and that defendant insurer's agents did not tell plaintiff insurer's policyholders about vested rights in their existing policies. Protective Serv. Life Ins. Co. v. Carter, 445 So. 2d 215 (Miss. 1983).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-5-39. Hearings on charges of unfair practices.

(1) Whenever the commissioner shall have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in Section 83-5-35, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of the hearing thereon to be held at the time and place fixed in the notice, which shall not be less than ten (10) days after the date of the service thereof.

(2) At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from the acts, methods, or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear, and be heard at such hearing by counsel or in person.

(3) Nothing contained in Sections 83-5-29 through 83-5-51 shall require the observance at any such hearing of formal rules of pleadings or evidence.

(4) The commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The commissioner, upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the circuit court of Hinds County, on application of the commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

(5) Statements of charges, notices, orders, and other processes of the commissioner under the cited sections may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions or by registering and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its

residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of such service, shall be proof of the same; and the return postcard receipt for such statement, notice, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

SOURCES: Codes, 1942, § 5649-06; Laws, 1956, ch. 329, § 6.

Cross References — Application of this section to sponsors of legal expense insurance plans, see § 83-49-21.

Applicability of this section to risk retention groups, see § 83-55-7.

Application of this section to a hearing held to determine if any person has engaged, or is engaging, in any unfair method of competition or any unfair or deceptive act or practice or is engaging in the business of home warranty without being properly licensed, see § 83-57-63.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

CJS. 44 C.J.S., Insurance §§ 81-83.

§ 83-5-41. Cease and desist orders and modifications thereof; administrative fines.

(1) If, after such hearing, the commissioner shall determine that the method of competition or the act or practice in question is defined in Section 83-5-35, and that the person complained of has engaged in such method of competition, act or practice in violation of Sections 83-5-29 through 83-5-51, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice. In addition to, or in lieu of, the cease and desist order, the commissioner may, after such hearing, impose an administrative fine not to exceed Five Thousand Dollars ($5,000.00) per violation, which shall be deposited into the special fund in the State Treasury designated as the "Insurance Department Fund."

(2) Until the expiration of the time allowed under Section 83-5-43(1) for filing a petition for review (by appeal), if no such petition has been duly filed within such time or, if the petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the circuit court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

(3) After the expiration of the time allowed for filing such a petition for review, if no such petition has been duly filed within such time, the commissioner may, at any time after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by him under this section whenever in his opinion conditions of fact or of law have so changed as to require such action, or if the public interest shall so require.

SOURCES: Codes, 1942, § 5649-07; Laws, 1956, ch. 329, § 7; Laws, 1997, ch. 410, § 4, eff from and after July 1, 1997.

Cross References — Judicial review of cease and desist orders, see § 83-5-43.

When cease and desist order issued under this section becomes final, see § 83-5-43.

Penalty for violation of cease and desist order, see § 83-5-49.

Application of this section to sponsors of legal expense insurance plans, see § 83-49-21.

Applicability of this section to risk retention groups, see § 83-55-7.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

CJS. 44 C.J.S., Insurance §§ 81-83.

§ 83-5-43. Judicial review of cease and desist orders.

(1) Any person required by an order of the commissioner under Section 83-5-41 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in Section 83-5-35 may obtain a review of such order by filing in the Circuit Court of Hinds County, within thirty (30) days from the date of the service of such order, a written petition praying that the order of the commissioner be set aside. A copy of such petition shall be forthwith served upon the commissioner, and thereupon the commissioner forthwith shall certify and file in such court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commissioner. Upon such filing of the petition and transcript, such court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of such petition shall operate as a stay of such order of the commissioner, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a judgment modifying, affirming, or reversing the order of the commissioner, in whole or in part. The findings of the commissioner as to the facts, if supported by substantial evidence, shall be conclusive.

(2) To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commissioner. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact or make new findings by reason of the additional evidence so taken; and he shall file such modified or new findings which, if supported by substantial evidence, shall be conclusive, and his recommendations, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) A cease and desist order issued by the commissioner under Section 83-5-41 shall become final:

(a) Upon the completion of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the commissioner may thereafter modify or set aside his order to the extent provided in Section 83-5-41(2) or

(b) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

(4) No order of the commissioner under Sections 83-5-29 through 83-5-51 or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

SOURCES: Codes, 1942, § 5649-08; Laws, 1956, ch. 329, § 8.

Cross References — Application of this section to sponsors of legal expense insurance plans, see § 83-49-21.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-5-45. Procedure as to unfair methods of competition and unfair practices which are not defined.

(1) Whenever the commissioner shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in Section 83-5-35, that such method of competition is unfair or that such act or practice is unfair or deceptive, and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than ten (10) days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided in Section 83-5-39. The commissioner shall, after such hearing, make a report in writing in which he shall state his findings as to the facts, and he shall serve a copy thereof upon such person.

(2) If such report charges a violation of Sections 83-5-29 through 83-5-51, and if such method of competition, act or practice has not been discontinued, the commissioner may, through the Attorney General of this state, at any time after thirty (30) days after the service of such report, cause a petition to be filed in the circuit court of this state within the district wherein the person resides, or has his principal place of business, to enjoin and restrain such person from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in

connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite.

(3) A transcript of the proceedings before the commissioner, including all evidence taken and the report and findings, shall be filed with such petition. If either party shall apply to the court for leave to adduce additional evidence and shall show, to the satisfaction of the court, that such additional evidence is material and there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings with the return of such additional evidence.

(4) If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the commissioner with respect thereto is to the interest of the public, and that the findings of the commissioner are supported by substantial evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.

(5) In addition to, or in lieu of, filing, through the Attorney General, a petition for a cease and desist order, the commissioner may, after a hearing in accordance with subsection (1), impose an administrative fine not to exceed Five Thousand Dollars ($5,000.00) per violation, which shall be deposited into the special fund in the State Treasury designated as the "Insurance Department Fund."

SOURCES: Codes, 1942, § 5649-09; Laws, 1956, ch. 329, § 9; Laws, 1997, ch. 410 § 5, eff from and after July 1, 1997.

Cross References — Violation of this section constituting grounds for revocation, suspension or denial of license for legal expense insurance, see § 83-49-11.

Application of this section to sponsors of legal expense insurance plans, see § 83-49-21.

Applicability of this section to risk retention groups, see § 83-55-7.

Application of this section to a hearing held to determine if any person has engaged, or is engaging, in any unfair method of competition or any unfair or deceptive act or practice or is engaging in the business of home warranty without being properly licensed, see § 83-57-63.

RESEARCH REFERENCES

ALR. Coverage of insurance transactions under state consumer protection statutes. 77 A.L.R.4th 991.

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-5-47. Judicial review by intervenor.

If the report of the commissioner does not charge a violation of Sections 83-5-29 through 83-5-51, then any intervenor in the proceedings may, within ten (10) days after the service of such report, cause a notice of appeal to be filed in the Circuit Court of Hinds County for a review of such report. Upon such review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act, or practice which it finds, notwithstanding such report of the commissioner, constitutes a violation of the cited sections.

SOURCES: Codes, 1942, § 5649-10; Laws, 1956, ch. 329, § 10.

Cross References — Application of this section to sponsors of legal expense insurance plans, see § 83-49-21.

Applicability of this section to risk retention groups, see § 83-55-7.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-5-49. Penalty for violation of cease and desist order.

Any person who willfully violates a cease and desist order of the commissioner under Section 83-5-41, after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the commissioner for the use of the public schools of the county or counties in which the act or acts complained of occurred, a sum to be determined by the commissioner not to exceed One Thousand Dollars ($1,000.00) for each violation, which if not paid may be recovered in a civil action instituted in the name of the commissioner in a court of competent jurisdiction in the county of the residence of such person who is a resident of the state. In the case of a nonresident, the action shall be brought in a court of competent jurisdiction in Hinds County.

In addition to or in lieu of the penalty set out above, the commissioner may revoke or suspend the license of such person to transact the business of insurance in this state, but from any order of the commissioner revoking or suspending such license, there shall be a right of appeal therefrom to the circuit court of the First Judicial District of Hinds County in the manner provided by law.

SOURCES: Codes, 1942, § 5649-11; Laws, 1956, ch. 329, § 11.

Cross References — Application of this section to sponsors of legal expense insurance plans, see § 83-49-21.

Applicability of this section to risk retention groups, see § 83-55-7.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 69.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance Form 11.1 (petition or application by

insurance company against state commissioner of insurance to enjoin further proceedings to suspend or revoke insurance company's certificate of authority).

CJS. 44 C.J.S., Insurance § 139.

§ 83-5-51. Provisions cumulative.

Sections 83-5-29 through 83-5-51 are hereby declared to be cumulative and supplemental to all other valid statutes relating to insurance companies, agents, solicitors, and brokers, and do not repeal or amend any existing statutes.

SOURCES: Codes, 1942, § 5649-12; Laws, 1956, ch. 329, § 12.

Cross References — Application of this section to sponsors of legal expense insurance plans, see § 83-49-21.

Applicability of this section to risk retention groups, see § 83-55-7.

§ 83-5-53. Blank forms furnished.

It shall be the duty of the commissioner to make available upon request, at the expense of the requesting insurance company, blank forms for statements, which forms may be by him from time to time changed, as may be requisite to secure full information as to the standing, condition, and such other information desired of companies regulated by his department.

SOURCES: Codes, 1906, §§ 2618, 2651; Hemingway's 1917, § 5081; 1930, §§ 5211, 5219; 1942, §§ 5725, 5733; Laws, 2005, ch. 386, § 1, eff from and after July 1, 2005.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance § 96.

§ 83-5-55. Annual and quarterly statements to be filed.

(1) Every insurance company shall file with the Commissioner of Insurance, on or before the first day of March of each year, a statement showing the business standing and financial condition of the company and sworn to by the president or vice president and secretary or treasurer or chief managing agent or officer of such company. The annual statement to be filed shall be in accordance with the NAIC Quarterly and Annual Statement Blank and Instructions thereto and the NAIC Accounting Practices and Procedures Manual.

(2) Every insurance company shall file with the Commissioner of Insurance a quarterly statement showing the business standing and financial condition of the company for that quarter and sworn to by the president or vice president and secretary or treasurer or chief managing agent or officer of such company. Each quarterly statement shall be filed within forty-five (45) days of

the last day of the quarter. The quarterly statement to be filed shall be in accordance with the NAIC Quarterly and Annual Statement Blank and Instructions thereto and the NAIC Accounting Practices and Procedures Manual. However, the Commissioner of Insurance may grant an exemption to any domestic company transacting business in Mississippi only. No exemption shall be granted to any domestic company transacting business across state lines.

SOURCES: Codes, 1906, § 2619; Hemingway's 1917, §§ 5082, 5083; 1930, §§ 5212, 5213; 1942, §§ 5726, 5727; Laws, 1916, ch. 202; Laws, 1991, ch. 550, § 1; Laws, 2001, ch. 433, § 1; Laws, 2005, ch. 386, § 2; Laws, 2007, ch. 369, § 1, eff from and after July 1, 2007.

Cross References — Disposition of annual statements, see § 83-1-21.
Audit of annual financial statements of insurers, see §§ 83-5-101 et seq.
Annual reports of burial associations, see § 83-37-19.

JUDICIAL DECISIONS

1. In general.

Duty and responsibility of the commissioner of insurance is prescribed primarily for the protection of the policyholders and the public, and the sections relating thereto were not intended to deal with the relation existing between the insurance corporation and its stockholders, or to require the commissioner to concern himself with the internal affairs and details of operation or management. Sanders v. Neely, 197 Miss. 66, 19 So. 2d 424 (1944).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance § 96.

§ 83-5-57. Reinsurance returns made annually.

Every fire insurance company now or hereafter admitted shall annually, and at such other times as the said commissioner may require, in addition to all the returns now, by law, required of it or its agents or managers, make a return to the insurance commissioner in such form and detail as may be prescribed by him of all reinsurance contracted for or affected by it, directly or indirectly, upon property located in Mississippi, such return to be sworn to by its president and secretary, if a company of any other state of the United States, and if a company of a foreign country by its president and secretary or by officers corresponding thereto, as to reinsurance as aforesaid contracted for or effected through the foreign office, and by the United States manager as to such reinsurance effected by the United States branch. If any company, domestic or foreign, shall directly or indirectly reinsure any risk taken by it on any property located in Mississippi in any company not duly authorized to transact business herein, except as hereinbefore provided, or if it shall refuse or neglect to make the returns required by this section, the said commissioner shall revoke its authority to transact business in this state.

SOURCES: Codes, 1906, § 2608; Hemingway's 1917, § 5071; 1930, § 5210; 1942, § 5724.

Cross References — Regulation of reinsurance by fire insurance companies, see § 83-13-1.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance § 96.

§ 83-5-59. Statements examined and abstracts published.

It shall be the duty of the commissioner to receive and thoroughly examine each annual statement required by this chapter and, if made in compliance with the law of Mississippi, to publish at the expense of the company an abstract of the same in one of the newspapers of the state, to be selected by the company. Such company shall, within thirty (30) days after the filing of such statement, notify the commissioner in writing of the name of the paper selected by it; otherwise, the paper shall be selected by the commissioner.

SOURCES: Codes, 1906, § 2620; Hemingway's 1917, § 5084; 1930, § 5214; 1942, § 5728; Laws, 1960, ch. 369, § 1.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance § 96.

§ 83-5-61. Certain premiums declared and taxed.

All corporations, firms, persons, or individuals obtaining insurance on property situate in this state owned by corporations, firms, or individuals resident therein, against fire, lightning, or tornado from companies, associations, firms, or corporations not authorized to transact business in this state, shall file with the insurance commissioner of the state a sworn statement or declaration, setting forth the name of the company, number of policy, amount of insurance rate, premium, and description, shall be required to pay to the insurance commissioner a tax thereon of three percent (3%) of the premiums paid on said policies, and shall further pay to said commissioner a fee of One Dollar ($1.00) on each policy for filing a record of the said statement or declaration, which record shall be kept for the private information of the insurance department and shall not be a public record.

SOURCES: Codes, 1906, § 2625; Hemingway's 1917, § 5090; 1930, § 5217; 1942, § 5731; Laws, 1912, ch. 226.

Cross References — Privilege tax levied on foreign insurance company, see §§ 27-15-103 et seq.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance §§ 96, 118-120, 131, 132.

§ 83-5-63. Penalty for failure to declare.

Any corporation, firm, person, or individual, resident in this state, who shall obtain or have possession of policies of insurance against loss by fire, lightning, or tornado on property situate in this state issued by companies, associations, firms, corporations, or individuals not authorized to transact the business of insurance in this state without complying with the provisions of Section 83-5-61 shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00). Nothing herein shall prevent the placing of insurance in unauthorized companies as provided elsewhere by this chapter.

SOURCES: Codes, Hemingway's 1917, § 5091; 1930, § 5218; 1942, § 5732; Laws, 1912, ch. 226.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 69.

CJS. 44 C.J.S., Insurance § 139.

§ 83-5-65. Books exhibited.

It shall be the duty of any person having in his possession or control any books, accounts, or papers of any person licensed under this chapter to exhibit the same to the commissioner on demand. On refusing to do so or knowingly or wilfully making any false statement in regard to the same, such person shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court.

SOURCES: Codes, 1906, § 2622; Hemingway's 1917, § 5086; 1930, § 5215; 1942, § 5729.

Cross References — Applicability of this section to agents and brokers for risk retention groups and purchasing groups, see § 83-55-7.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-5-67. License revoked if statement untrue.

If the commissioner shall become satisfied at any time that any statements made by any person licensed under this chapter shall be untrue, or in case the general agent should fail or refuse to obey the provisions of this chapter, the commissioner shall have power to revoke and cancel such license.

SOURCES: Codes, 1906, § 2621; Hemingway's 1917, § 5085; 1930, § 5220; 1942, § 5734.

Cross References — Application of this section to suspension, revocation or refusal of license for failure to submit to examination by commissioner, see § 83-5-207.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance Form 11.1 (petition or application by insurance company against state commissioner of insurance to enjoin further proceedings to suspend or revoke insurance company's certificate of authority).

CJS. 44 C.J.S., Insurance § 124.

§ 83-5-69. Penalty for failure to file statements and making false return.

Any company that neglects to make and file its quarterly and annual statement within the time provided in this chapter shall pay to the Commissioner of Insurance One Hundred Dollars ($100.00) for each day's neglect, which penalty shall be deposited into the special fund in the State Treasury designated as the "Insurance Department Fund"; and upon notice by the commissioner to that effect, its authority to do new business shall cease while such default continues. For willfully making a false annual, quarterly or other statement it is required by law to make, any insurance company, association or order, and the person making oath to or subscribing the same, shall severally be guilty of a misdemeanor; and, upon conviction, be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00). Any person making oath to such false statement shall be guilty of the crime of perjury.

SOURCES: Codes, 1906, § 2646; Hemingway's 1917, § 5112; 1930, § 5221; 1942, § 5735; Laws, 2002, ch. 389, § 1; Laws, 2005, ch. 386, § 3, eff from and after July 1, 2005.

Cross References — Perjury, see §§ 97-9-59 through 97-9-65.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance § 96.

§ 83-5-71. Duration of license.

The licenses issued under this chapter shall continue for the next ensuing twelve (12) months after June 1 of each year unless sooner revoked or suspended by the commissioner.

SOURCES: Codes, 1892, § 2343; 1906, § 2624; Hemingway's 1917, § 5089; 1930, § 5216; 1942, § 5730; Laws, 1995, ch. 315, § 1, eff from and after July 1, 1995.

Cross References — Annual license for fraternal society, see § 83-29-27.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance, Form No. 21 (petition or application for writ of mandamus to compel renewal of license to conduct insurance business).

14 Am. Jur. Pl & Pr Forms (Rev), Form No. 24 (notice of intention to apply for peremptory writ of mandamus to compel renewal of license to conduct insurance business).

14 Am. Jur. Pl & Pr Forms (Rev), Form No. 25 (order for issuance of alternative writ of mandamus to compel renewal of license to conduct insurance business).

14 Am. Jur. Pl & Pr Forms (Rev), Form No. 26 (alternative writ of mandamus to compel renewal of license to conduct insurance business).

14 Am. Jur. Pl & Pr Forms (Rev), Form No. 27 (judgment or decree granting peremptory writ of mandamus to compel renewal of license to conduct insurance business).

14 Am. Jur. Pl & Pr Forms (Rev), Form No. 28 (peremptory writ of mandamus to compel renewal of license to conduct insurance business).

CJS. 44 C.J.S., Insurance §§ 118-120.

§ 83-5-72. Life, health and accident insurance companies and health maintenance organizations to contribute to Insurance Department Fund.

All life, health and accident insurance companies and health maintenance organizations doing business in this state shall contribute annually, at such times as the Insurance Commissioner shall determine, in proportion to their gross premiums collected within the State of Mississippi during the preceding year, to a special fund in the State Treasury to be known as the "Insurance Department Fund" to be expended by the Insurance Commissioner in the payment of the expenses of the Department of Insurance as the commissioner may deem necessary. The commissioner is hereby authorized to employ such actuarial and other assistance as shall be necessary to carry out the duties of the department; and the employees shall be under the authority and direction of the Insurance Commissioner. The amount to be contributed annually to the fund shall be fixed each year by the Insurance Commissioner at a percentage of the gross premiums so collected during the preceding year. However, a minimum assessment of One Hundred Dollars ($100.00) shall be charged each licensed life, health and accident insurance company regardless of the gross premium amount collected during the preceding year.

The total contributions collected for the Insurance Department Fund shall not exceed the sum of Seven Hundred Fifty Thousand Dollars ($750,000.00) in each fiscal year.

SOURCES: Laws, 1990, ch. 557, § 4; Laws, 1991, ch. 430 § 4; Laws, 1998, ch. 451, § 2, eff from and after July 1, 1998.

Cross References — Contributions of property and casualty insurance companies to Insurance Department Fund, see § 83-2-33.

§ 83-5-73. Fees for commissioner.

The commissioner shall collect and pay into the special fund in the State Treasury designated as the "Insurance Department Fund" the following fees: for certificate of authority to each general or district agent or manager, Twenty-five Dollars ($25.00); for filing and processing an agent's certificate of authority, Twenty-five Dollars ($25.00); for filing and examining statement preliminary to admission, One Thousand Dollars ($1,000.00); for filing and processing a Form A application, Two Thousand Dollars ($2,000.00); for filing and auditing annual statement, Five Hundred Dollars ($500.00); for filing any other paper required by law, Fifty Dollars ($50.00); for continuing education courses or programs filed by the providers for approval, Fifty Dollars ($50.00); for each certification company licensed status, Forty Dollars ($40.00); for each seal when required, Twenty Dollars ($20.00); for service of process on the commissioner as attorney, Twenty-five Dollars ($25.00).

SOURCES: Codes, 1906, § 2630; Hemingway's 1917, § 5096; 1930, § 5222; 1942, § 5736; Laws, 1977, ch. 329, § 2; ch. 398, § 2; Laws, 1985, ch. 433, § 9; Laws, 1988, ch. 526, § 1; Laws, 1991, ch. 428 § 1; Laws, 1994, ch. 613, § 1; Laws, 2008, ch. 440, § 1, eff from and after passage (approved Apr. 7, 2008.)

Editor's Note — Section 13 of ch. 526, Laws, 1988, provides as follows:

"SECTION 13. The commissioner may, after notice and hearing, issue rules and regulations that he deems necessary to effectuate the purposes of this act or to eliminate devices or plans designed to avoid or render ineffective the provisions of this act. The commissioner may require such information as is reasonably necessary for the enforcement of this act. All rules and regulations adopted and promulgated pursuant to this act shall be subject to the provisions of the Mississippi Administrative Procedures Law as provided in Section 25-43-1 et seq. [now 25-43-1.101 et seq.], Mississippi Code of 1972."

Cross References — Procedure following service of process on commissioner, see § 83-5-11.

Authority to issue continuous agent certificates, see § 83-15-3.

Privilege tax for continuous agent certificate, see § 83-37-21.

RESEARCH REFERENCES

ALR. Public regulation or control of insurance agents or brokers. 10 A.L.R.2d 950.

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-5-75. Fees of fraternal orders.

For all larger fraternal orders, as defined in Section 83-30-1, the commissioner shall collect charges as provided in Section 83-5-73, as well as all other fees and charges due and payable by any company, association, order or individual in his department. If a fraternal order would not be considered a larger fraternal order under Section 83-30-1, the commissioner shall collect the following charges: for filing charter, etc., of fraternal orders doing an insurance business, preliminary to admission, Twenty-five Dollars ($25.00); for filing and auditing annual statement, Ten Dollars ($10.00); all other fees and charges due and payable by any company, association, order or individual in his department.

SOURCES: Codes, 1906, § 2631; Hemingway's 1917, § 5097; 1930, § 5223; 1942, § 5737; Laws, 2008, ch. 440, § 2, eff from and after passage (approved Apr. 7, 2008.)

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-5-77. Publication fees.

For publication of annual statement, there shall be a fee of Eighty Dollars ($80.00), Forty Dollars ($40.00) of which shall be paid to the publishers and Forty Dollars ($40.00) paid to the special fund in the State Treasury known as the "Insurance Department Fund". The commissioner shall receive for copy of any record or paper in his office, Fifty Cents (50¢) per page, and Twenty Dollars ($20.00) for certifying same, or any fact or data from the records of the office.

SOURCES: Codes, 1906, § 2632; Hemingway's 1917, § 5098; 1930, § 5224; 1942, § 5738; Laws, 1948, ch. 348, § 1; Laws, 1960, ch. 369, § 2; Laws, 1977, ch. 396; Laws, 1988, ch. 526, § 2; Laws, 1997, ch. 324, § 1; Laws, 2008, ch. 440, § 3, eff from and after passage (approved Apr. 7, 2008.)

Editor's Note — Section 13 of ch. 526, Laws, 1988, provides as follows:

"SECTION 13. The commissioner may, after notice and hearing, issue rules and regulations that he deems necessary to effectuate the purposes of this act or to eliminate devices or plans designed to avoid or render ineffective the provisions of this act. The commissioner may require such information as is reasonably necessary for the enforcement of this act. All rules and regulations adopted and promulgated pursuant to this act shall be subject to the provisions of the Mississippi Administrative Procedures Law as provided in Section 25-43-1 et seq. [now 25-43-1.101 et seq.], Mississippi Code of 1972."

Amendment Notes — The 2008 amendment rewrote the section to increase the fees collected by the commissioner of insurance for publication of annual statements.

§ 83-5-79. Investigation of complaint by citizens.

Complaint being filed by any citizen of this state that any company authorized to do business in this state has violated any of the provisions of the insurance laws of Mississippi, the commissioner shall diligently investigate the matter and, if necessary, examine by himself or his accredited representatives at the head office located in the United States of America such officers or agents of such company as he may deem proper; also all books, records, and papers of the same, and also the officers thereof under oath, as to such alleged violation or violations. Before making any examinations which would require the commissioner to go to a foreign state, he shall require the party or parties making complaint to file with him a good and sufficient bond to secure any expense or costs that may be necessary in making such examination. In the event that the insurance company be found not guilty of a violation of said insurance laws by the commissioner, the said bond shall be responsible for all expenses incurred by reason of such investigation; but should such company be found guilty of a violation of such laws, then said company shall be responsible for the expense thereof.

SOURCES: Codes, 1906, § 2655; Hemingway's 1917, § 5121; 1930, § 5201; 1942, § 5715.

Cross References — Penalty for failure to exhibit books of company, see § 83-5-65.
General penalty for violation of insurance laws, see § 83-5-85.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-5-81. Suit for payment of expense if refused.

If any company shall fail or refuse to pay all legal and reasonable expenses of examination upon the presentation of a bill therefor by the commissioner, then he shall at once institute proceedings against the said company or other insurer for recovery of the same, and for this purpose may attach any of the property of the said company to be found within the jurisdiction of the court before which such proceedings are heard.

SOURCES: Codes, 1906, § 2656; Hemingway's 1917, § 5122; 1930, § 5202; 1942, § 5716.

Cross References — Authority for enforcement of laws by suit, see § 83-1-17.
General penalty for violation of insurance laws, see § 83-5-85.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

CJS. 44 C.J.S., Insurance § 139.

§ 83-5-83. Refusal to comply; license revoked.

If any company, corporation, or association while holding a license to transact the business of insurance in Mississippi shall fail or refuse to comply with any of the provisions or requirements of the insurance laws of this state, it shall be the duty of the commissioner of insurance to notify such company, corporation, or association by registered letter properly addressed and mailed, or by some other form of actual notice in writing delivered to an executive officer of such company, corporation, or association, of his intention to revoke the license of such company, corporation, or association to transact business in this state at the expiration of thirty (30) days after mailing such registered letter, or a date upon which such actual notice is served. If such provisions or requirements are not fully complied with before the expiration of said thirty (30) days, it shall be the duty of the commissioner of insurance to revoke the license of such company, corporation, or association; and in case of such revocation, such company, corporation, or association shall not be entitled to receive another license for a period of one (1) year, and until it shall have fully complied with all such provisions and requirements of said insurance laws.

SOURCES: Codes, Hemingway's 1917, § 5083; 1930, § 5213; 1942, § 5727; Laws, 1916, ch. 202.

Cross References — Suspension or revocation of authority to do business in state, see § 83-1-29.

Revocation of license for violation of law or unsound financial condition, see § 83-5-17.

Application of this section to suspension, revocation or refusal of license for failure to submit to examination by commissioner, see § 83-5-207.

JUDICIAL DECISIONS

1. In general.

Section 83-5-83 provides the procedure to be followed when an insurance company fails to comply with requirements of the statute to have its license renewed. Mississippi Ins. Guar. Ass'n v. Gandy, 289 So. 2d 677 (Miss. 1973).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statute establishing compensation for claims not paid because of insurer's insolvency. 30 A.L.R.4th 1110.

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

49 Am. Jur. Proof of Facts 2d 1, Fire Insurer's Bad Faith in Responding to Claim by Insured.

CJS. 44 C.J.S., Insurance § 124.

§ 83-5-85. General penalty.

For violation of any provisions of the insurance laws of Mississippi, the penalty whereof is not specially provided, the offender shall be guilty of a misdemeanor and, on conviction, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00). For expenses in seeking out, detecting, and punishing violations of such laws, the commissioner may assess an additional penalty to be paid by the offender as restitution in an amount to cover such expenses as may be approved by the court.

The penalties authorized by this section are cumulative and supplemental to any other penalty, fine or other sanction, and shall not be a bar to any other civil cause of action or criminal prosecution.

SOURCES: Codes, 1906, § 2649; Hemingway's 1917, § 5115; 1930, § 5301; 1942, § 5815; Laws, 1987, ch. 422, § 26, eff from and after January 1, 1988.

Cross References — Penalties for violation of competitive rating laws for property and casualty insurance, effective from and after January 1, 1988, see § 83-2-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 69.

CJS. 44 C.J.S., Insurance § 139.

§ 83-5-87. Contents of residential property insurance policy.

An insurance company shall not issue a residential property insurance policy that fails to include both the causes of loss of fire and extended coverages unless such policy is approved by the commissioner.

SOURCES: Laws, 1987, ch. 422, § 28, eff from and after January 1, 1988.

§ 83-5-89. Reporting arson incidents; rules and regulations.

(1) The Commissioner of Insurance shall establish a program for the collection of information relating to arson incidents occurring in the state. The program shall be administered through an appropriate bureau within the Department of Insurance.

(2) The fire department, sheriff, chief of police or mayor, an agency of the state or political subdivision shall submit any information required on the Uniform Arson Incident Report, established by the Commissioner of Insurance, to the Commissioner of Insurance when an arson incident occurs in their respective jurisdictions.

(3) The Commissioner of Insurance shall promulgate rules to implement the program and may obtain any assistance available from the United States Department of Justice in the accomplishment of this section.

SOURCES: Laws, 1990, ch. 444, § 1, eff from and after July 1, 1990.

§ 83-5-91. Health insurance for person called to serve on active military duty by executive order of the President of the United States.

The Commissioner of Insurance shall issue, within thirty (30) days of March 20, 1991, a directive to every insurance carrier authorized to write health insurance policies in this state to require the following:

(a) Every insurance carrier that is providing health insurance coverage to a person at the time such person is called to serve on active military duty by Executive Order of the President of the United States, upon such person's becoming deactivated from active duty, shall resume providing the same health insurance coverage, including any preexisting condition which was covered, to that person and his or her dependents as the carrier was providing before the person was called to active military duty as provided in paragraphs (b) and (c) herein;

(b) In the case of group coverage, an employee covered under paragraph (a) of this section shall be entitled to the same coverage as the other employees of his or her group that is in effect at the time of his or her deactivation. If there is no longer a group policy in effect upon his or her deactivation, such employee shall be entitled to receive any nongroup coverage that is offered in the nongroup market by that carrier;

(c) In the case of nongroup coverage, a person covered under paragraph (a) of this section shall be entitled to receive the same coverage he or she had before serving on active military duty or if such coverage is no longer available, any other coverage offered in the nongroup market by that carrier; and

(d) Every insurance carrier shall resume such coverage as required in this section regardless of any condition developed by the person and his or her dependents during the time the person was serving on active military duty.

SOURCES: Laws, 1991, ch. 404, § 1, eff from and after passage (approved March 20, 1991).

§ 83-5-93. Proposing party to provide impact report on legislation to enact mandated health care coverage.

Before the Legislature's consideration of any bill that mandates health insurance coverage for specific health services, for specific diseases or for certain providers of health care services as part of any individual or group health insurance policy, the person or organization that seeks sponsorship of such proposal shall submit to the legislative committees to which the proposal is assigned an impact report that assesses the social and financial effects and the medical efficacy of the proposed mandated coverage. For purposes of Sections 83-5-93 and 83-5-95, mandated health insurance coverage shall include any legislative proposal which either mandates the inclusion of certain benefits, coverages or reimbursements for covered health care services in accident and health insurance policies or provides for the mandatory offering of such benefits, coverages or reimbursements in accident and health insurance policies.

SOURCES: Laws, 1993, ch. 373, § 1, eff from and after passage (approved March 15, 1993).

§ 83-5-95. Contents of impact report.

The report required under Section 83-5-93 or assessing the impact of a proposed mandate of health coverage shall include at the minimum and to the extent that information is available, the following:

(a) The social impact, including:

(i) The extent to which the treatment or service is generally utilized by a significant portion of the population;

(ii) The extent to which such insurance coverage is already generally available;

(iii) If coverage is not generally available, the extent to which the lack of coverage results in persons being unable to obtain necessary health care treatment;

(iv) If the coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment;

(v) The level of public demand for the treatment or service;

(vi) The level of public demand for individual or group insurance coverage of the treatment or service;

(vii) The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts; and

(viii) The impact of indirect costs which are costs other than premiums and administrative costs, on the question of the costs and benefits of coverage.

(b) The financial impact, including:

(i) The extent to which insurance coverage of the kind proposed would increase or decrease the cost of the treatment or service;

(ii) The extent to which the proposed coverage might increase the use of the treatment or service;

(iii) The extent to which the mandated treatment or service might serve as an alternative for more expensive treatment or service;

(iv) The extent to which insurance coverage of the health care service or provider can be reasonably expected to increase or decrease the insurance premium and administrative expenses of policyholders; and

(v) The impact of this coverage on the total cost of health care.

(c) The medical efficacy, including:

(i) The contribution of the insurance coverage to the quality of patient care and the health status of the population, including the results of any research demonstrating the medical efficacy of the treatment or service compared to alternatives or not providing the treatment or service; and

(ii) If the legislation seeks to mandate coverage of an additional class of practitioners:

1. The results of any professionally acceptable research demonstrating the medical results achieved by the additional class of practitioners relative to those already covered; and

2. The methods of the appropriate professional organization that assure clinical proficiency.

(d) The effects of balancing the social, economic and medical efficacy considerations, including:

(i) The extent to which the need for coverage outweighs the cost of mandating the benefit for all insureds; and

(ii) The extent to which the problem of coverage may be solved by mandating the availability of the coverage as an option for insureds.

SOURCES: Laws, 1993, ch. 373, § 2, eff from and after passage (approved March 15, 1993).

AUDIT OF FINANCIAL STATEMENTS OF INSURERS

Sec.
83-5-101. Audited financial report.
83-5-102. Definitions.
83-5-103. Content of annual audited financial report.
83-5-104. Exemptions.
83-5-105. Extensions.
83-5-106. Designation of independent certified public accountants.
83-5-107. Qualifications of independent certified public accountant.
83-5-108. Consolidated or combined audits.
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83-5-110. Notification of adverse financial condition.
83-5-111. Report on significant deficiencies in internal controls.
83-5-112. Accountant's letter of qualifications.
83-5-113. Definition, availability and maintenance of certified public accountant work papers.
83-5-114. Severability.
83-5-115. Authority of Department of Insurance to determine method of calculating values of stocks, bonds and other sureties held by insurer.
83-5-117. Methods of valuation which may be used to calculate values of stocks, bonds and other sureties held by insurer.
83-5-119. Requirements for audit committees.
83-5-121. Conduct of insurer in connection with the preparation of required reports and documents.
83-5-123. Management's report of internal control over financial reporting.
83-5-125. Canadian and British companies.

§ 83-5-101. Audited financial report.

All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report as a supplement to the annual statement on or before June 1 for the year ended December 31 immediately preceding. The Commissioner of Insurance may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days' advance notice to the insurer.

SOURCES: Laws, 1991, ch. 550, § 2, eff from and after July 1, 1991.

Cross References — Content of annual audited financial report, see § 83-5-103. Designation of independent certified public accountants, see § 83-5-106.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-5-102. Definitions.

As used in Sections 83-5-102 through 83-5-113, the following terms have the respective meanings herein set forth unless the context shall require otherwise:

(a) "Audited financial report" means and includes those items specified in Section 83-5-103.

(b) "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; for Canadian and British companies, it means a Canadian chartered or British chartered accountant.

(c) "Commissioner" means the Commissioner of Insurance.

(d) "Department" means the Department of Insurance.

(e) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.

(f) "Insurer" means an insurer as defined in Section 83-5-1.

(g) "Affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(h) "Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this section at the election of the controlling person. Refer to Section 83-5-119(e) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

(i) "Independent board member" has the same meaning as described in Section 83-5-119(c).

(j) "Group of insurers" means those licensed insurers included in the reporting requirements of Sections 83-6-1 through 83-6-43, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(k) "Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements and includes those policies and procedures that:

(i) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(ii) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(iii) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements.

(*l*) "RBC" means risk-based capital pursuant to Sections 83-5-401 through 83-5-427.

(m) "SEC" means the United States Securities and Exchange Commission.

(n) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

(o) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant.

(p) "SOX Compliant Entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934); (ii) the audit committee independence requirements of Section 301 (Section 10A(m) (3) of the Securities Exchange Act of 1934); and (iii) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

SOURCES: Laws, 1991, ch. 550, § 3; Laws, 2007, ch. 369, § 2; Laws, 2009, ch. 334, § 1, eff from and after Jan. 1, 2010.

Amendment Notes — The 2009 amendment, in the version effective from and after January 1, 2010, added "for Canadian and British companies, it means a Canadian chartered or British chartered accountant" at the end of (b); substituted "an insurer" for "a licensed insurer" in (f); and added (g) through (p).

Cross References — Canadian and British companies, see § 83-5-125.

Federal Aspects — Sections 201 and 301 of the Sarbanes-Oxley Act of 2002, see 15 USCS § 78j-1.

Section 404 of the Sarbanes-Oxley Act of 2002, see 15 USCS § 7262.

§ 83-5-103. Content of annual audited financial report.

The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the state of domicile.

The annual audited financial report shall include the following:

(a) Report of independent certified public accountant.

(b) Balance sheet reporting admitted assets, liabilities, capital and surplus.

(c) Statement of operations.

(d) Statement of cash flows.

(e) Statement of changes in capital and surplus.

(f) Notes to financial statements. These notes shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to Section 83-5-55 with a written description of the nature of these differences.

(g) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statements shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

SOURCES: Laws, 1991, ch. 550, § 4; Laws, 2007, ch. 369, § 3, eff from and after July 1, 2007.

Cross References — Audited financial report, defined, see § 83-5-102.

Scope of examination and report of independent certified public accountant, see § 83-5-109.

§ 83-5-104. Exemptions.

Every insurer shall be subject to Sections 83-5-101 through 83-5-113. Insurers having direct premiums written of less than One Million Dollars ($1,000,000.00) in any calendar year and less than one thousand (1,000) policyholders or certificate holders of directly written policies nationwide at the end of such calendar year shall be exempt from Sections 83-5-101 through 83-5-113 for such year unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities, except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of One Million Dollars ($1,000,000.00) or more will not be so exempt.

Upon written application of any insurer, the commissioner may grant an exemption from compliance with Sections 83-5-101 through 83-5-113 if the commissioner finds, upon review of the application, that compliance with Sections 83-5-101 through 83-5-113 would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an insurer's written request for an exemption from Sections 83-5-101 through 83-5-113, such insurer may request in writing a hearing on its application for an exemption. Such hearing shall be held in accordance with the rules and regulations of the Department of Insurance pertaining to administrative hearing procedures.

SOURCES: Laws, 1991, ch. 550, § 5; Laws, 2009, ch. 334, § 2, eff from and after Jan. 1, 2010.

Amendment Notes — The 2009 amendment, in the version effective from and after January 1, 2010, deleted the former last paragraph, which provided that insurers not retaining a certified public accountant as required in §§ 83-5-101 through 83-5-113 who qualify as independent could meet a specified schedule for compliance unless permitted otherwise by the commissioner of insurance.

§ 83-5-105. Extensions.

Extensions of the June 1 filing date may be granted by the commissioner for thirty-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

If an extension is granted, a similar extension of thirty (30) days is granted to the filing of Management's Report of Internal Control over Financial Reporting.

SOURCES: Laws, 1991, ch. 550, § 6; Laws, 2009, ch. 334, § 3, eff from and after Jan. 1, 2010.

Amendment Notes — The 2009 amendment, in the version effective from and after January 1, 2010, added the second paragraph.

Cross References — Management's Report of Internal Control over Financial Reporting defined, see § 83-5-102.

§ 83-5-106. Designation of independent certified public accountants.

Each insurer required to file an annual audited financial report must, within sixty (60) days after becoming subject to such requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm (generally referred to here as the "accountant") retained to conduct the annual audit set forth in Section 83-5-101. Insurers not previously retaining an independent certified public accountant shall register the name and address of their retained certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.

The insurer shall obtain a letter from such accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the rules and regulations of the Department of Insurance that relate to accounting and financial matters and affirming that he will express his opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the department, specifying such exceptions as he may believe appropriate.

If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five (5) business days notify the Department of Insurance of this event. The insurer shall also furnish the commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request such former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he does not agree; and the insurer shall furnish such responsive letter from the former accountant to the commissioner together with its own.

SOURCES: Laws, 1991, ch. 550, § 7, eff from and after July 1, 1991.

§ 83-5-107. Qualifications of independent certified public accountant.

(1) The commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

(a) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as indemnification, with respect to the audit of the insurer.

(2) Except as otherwise provided herein, the commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and rules and regulations and code of ethics and rules of professional conduct of the appropriate state board of public accountancy, or similar code.

(3) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Sections 83-23-1 through 83-23-9, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(4) The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than five (5) consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

(a) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

(b) Premium volume of the insurer; or

(c) Number of jurisdictions in which the insurer transacts business.

The insurer shall file, with its annual statement filing, the approval for relief with the states that it is licensed or doing business.

(5) The commissioner shall neither recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by, a natural person who:

(a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 USCS Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(b) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or

(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of Sections 83-5-101 through 83-5-113.

(6) The commissioner may hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his opinion on the financial statements in the annual audited financial report made pursuant to Sections 83-5-101 through 83-5-113 and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this section.

(7) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:

(a) Bookkeeping or other services related to the accounting records or financial statements of the insurer;

(b) Financial information systems design and implementation;

(c) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(d) Actuarially oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:

(i) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

(ii) The insurer has competent personnel (or engages a third-party actuary) to estimate the reserves for which management takes responsibility; and

(iii) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

(e) Internal audit outsourcing services;

(f) Management functions or human resources;

(g) Broker or dealer, investment adviser, or investment banking services;

(h) Legal services or expert services unrelated to the audit; or

(i) Any other services that the commissioner determines are impermissible.

In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three (3) basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.

(8) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subsection (7) or that do not conflict with subsection (7), only if the activity is approved in advance by the audit committee, in accordance with subsection (9).

(9) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to nonaudit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly owned subsidiary of a SOX Compliant Entity or:

(a) The aggregate amount of all such nonaudit services provided to the insurer constitutes not more than five percent (5%) of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided;

(b) The services were not recognized by the insurer at the time of the engagement to be nonaudit services; and

(c) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(10) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subsection (9). The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(11) The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

The insurer shall file, with its annual statement filing, the approval for relief with the states that it is licensed or doing business.

SOURCES: Laws, 1991, ch. 550, § 8; Laws, 2003, ch. 420, § 1; Laws, 2007, ch. 369, § 4; Laws, 2009, ch. 334, § 4, eff from and after Jan. 1, 2010.

Amendment Notes — The 2009 amendment, in the version effective from and after January 1, 2010, in (1)(a), inserted "or British" and substituted "chartered accountant" for "chartered account"; rewrote (4); substituted "shall neither recognize" for "shall not recognize" near the beginning of (5); inserted "independent" preceding "certified public accountant"; added (7) through (11); and made minor stylistic changes.

Cross References — Accountant's letter of qualification, see § 83-5-112.

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. Pl & Pr Forms, Rev, Accountants, Form 21.2.

§ 83-5-108. Consolidated or combined audits.

An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining work sheet shall be filed with the report, as follows:

(a) Amounts shown on the consolidated or combined audited financial report shall be shown on the work sheet.

(b) Amounts for each insurer subject to this section shall be stated separately.

(c) Noninsurance operations may be shown on the work sheet on a combined or individual basis.

(d) Explanations of consolidating and eliminating entries shall be included.

(e) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the work sheet and comparable amounts shown on the annual statements of the insurers.

SOURCES: Laws, 1991, ch. 550, § 9, eff from and after July 1, 1991.

§ 83-5-109. Scope of examination and report of independent certified public accountant.

Financial statements furnished pursuant to Section 83-5-103 shall be audited by an independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. The independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by generally accepted auditing standards, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to Section 83-5-123, the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards No. 102, "Defining Professional Requirements in Statements on Auditing Standards," or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

SOURCES: Laws, 1991, ch. 550, § 10; Laws, 2009, ch. 334, § 5, eff from and after Jan. 1, 2010.

Amendment Notes — The 2009 amendment, in the version effective from and after January 1, 2010, rewrote the section.

§ 83-5-110. Notification of adverse financial condition.

The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report in writing within five (5) business days to the board of directors or its audit committee any reasonable belief by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of the state insurance laws as of that date. An insurer who has received a report pursuant to this paragraph shall forward a copy of the report to the commissioner within five (5) business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive such evidence within the required five (5) business days period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five (5) business days.

No independent public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if such statement is made in good faith in compliance with the above paragraph.

If the accountant, subsequent to the date of the audited financial report filed pursuant to Sections 83-5-101 through 83-5-113, becomes aware of facts which might have affected his report, the accountant is obligated to take such action as prescribed in Volume I, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants.

SOURCES: Laws, 1991, ch. 550, § 11, eff from and after July 1, 1991.

§ 83-5-111. Report on significant deficiencies in internal controls.

In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within sixty (60) days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined by Statement on Auditing Standard No. 115, "Communication of Internal Control Related Matters Identified in an Audit," or its replacement) as of December 31 immediately preceding in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses if the actions are not described in the accountant's communication.

SOURCES: Laws, 1991, ch. 550, § 12; Laws, 2009, ch. 334, § 6, eff from and after Jan. 1, 2010.

Amendment Notes — The 2009 amendment, in the version effective from and after January 1, 2010, rewrote the section.

§ 83-5-112. Accountant's letter of qualifications.

The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(a) That he is independent with respect to the insurer and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the rules of professional conduct of the appropriate state board of public accountancy, or similar code.

(b) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this section shall be construed as prohibiting the accountant from utilizing such staff as he deems appropriate where such use is consistent with the standards prescribed by generally accepted auditing standards.

(c) That the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with this section and that the commissioner will be relying on this information in the monitoring and regulating of the financial position of insurers.

(d) That the accountant consents to the requirements of Section 83-5-113 and that the accountant consents and agrees to make available for review by the commissioner, his designee or his appointed agent, the work papers, as defined in Section 83-5-113.

(e) A representation that the accountant is properly licensed by an appropriate state licensing authority and that he is a member in good standing in the American Institute of Certified Public Accountants.

(f) A representation that the accountant is in compliance with the requirements of Section 83-5-107.

SOURCES: Laws, 1991, ch. 550, § 13, eff from and after July 1, 1991.

§ 83-5-113. Definition, availability and maintenance of certified public accountant work papers.

Work papers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusion reached pertinent to his examination of the financial statements of an insurer. Work papers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his examination of the financial statements of an insurer and which support his opinion thereof.

Every insurer required to file an audited financial report pursuant to Sections 83-5-101 through 83-5-113 shall require the accountant to make available for review by department examiners all work papers prepared in the conduct of his examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Department of Insurance or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the Department of Insurance has filed a report on examination covering the period of the audit, but no longer than seven (7) years from the date of the audit report.

In the conduct of the aforementioned periodic review by the department examiners, it shall be agreed that photocopies of pertinent audit work papers may be made and retained by the department. Such reviews by the department examiners shall be considered investigations and all work papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination work papers generated by the department.

SOURCES: Laws, 1991, ch. 550, § 13; Laws, 2009, ch. 334, § 7, eff from and after Jan. 1, 2010.

Amendment Notes — The 2009 amendment, in the version effective from and after January 1, 2010, added "but no longer than seven (7) years from the date of the audit report" at the end of the second paragraph.

§ 83-5-114. Severability.

If any section or portion of a section of Sections 83-5-101 through 83-5-113 or its applicability to any person or circumstance is held invalid by a court, the remainder of this chapter or the applicability of the provision to other persons or circumstances shall not be affected.

SOURCES: Laws, 2009, ch. 334, § 12, eff from and after Jan. 1, 2010.

§ 83-5-115. Authority of Department of Insurance to determine method of calculating values of stocks, bonds and other sureties held by insurer.

(1) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer, if secured and not in default as to principal or interest, may be valued as follows:

(a) If purchased at par, at the par value.

(b) If purchased above or below par, on the basis of the purchase price adjusted to bring the value to par at maturity and to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of this method, according to any accepted method of valuation approved by the Department of Insurance.

(c) Purchase price shall not be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of the securities.

(2) The Department of Insurance shall have full discretion in determining the method of calculating values according to the rules set forth in this section, but no method or valuation shall be inconsistent with any applicable valuation or method used by insurers in general or any method formulated or approved by the National Association of Insurance Commissioners or its successor organization.

SOURCES: Laws, 1994, ch. 313, § 1, eff from and after July 1, 1994.

Cross References — Methods of valuation which may be used to calculate values of stocks, bonds and other sureties held by insurer, see § 83-5-117.

§ 83-5-117. Methods of valuation which may be used to calculate values of stocks, bonds and other sureties held by insurer.

(1) Securities, other than those referred to in 83-5-115, held by an insurer shall be valued, in the discretion of the Department of Insurance, at their market value or at their appraised value or at prices determined by it as representing their fair market value.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the Department of Insurance and in accordance with the method of valuation as it may approve.

(3) Stock of a subsidiary corporation of an insurer shall not be valued at an amount in excess of the net value thereof as based upon those assets only of the subsidiary which would be eligible under either Section 83-6-2 or 83-19-51 for investment of the funds of the insurer directly.

(4) No valuations under this section shall be inconsistent with any applicable valuation or method formulated or approved by the National Association of Insurance Commissioners or its successor organization.

SOURCES: Laws, 1994, ch. 313, § 2, eff from and after July 1, 1994.

§ 83-5-119. Requirements for audit committees.

Every insurer required to file an annual audited financial report pursuant to this section shall designate a group of individuals as constituting its audit committee. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this section at the election of the controlling person.

This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly owned subsidiary of a SOX Compliant Entity.

(a) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to this section. Each accountant shall report directly to the audit committee.

(b) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to paragraph (e) and Section 83-5-102(h).

(c) In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(d) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one (1) year from the occurrence of the event that caused the member to be no longer independent.

(e) To exercise the election of the controlling person to designate the audit committee for purposes of this section, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(f)(i) The audit committee shall require the accountant that performs for an insurer any audit required by this section to timely report to the audit committee in accordance with the requirements of Statement on Auditing Standard No. 114, The Auditor's Communication With Those Charged With Governance or its replacement, including:

1. All significant accounting policies and material permitted practices;

2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

3. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(ii) If an insurer is a member of an insurance holding company system, the reports required by paragraph (f)(i) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(g) The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums

$0-$300,000,000	**Over $300,000,000-$500,000,000**	**Over $500,000,000**
No minimum requirments. See also Notes A and B.	Majority (50% or more) of members shall be independent. See also Notes A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than Five Hundred Million Dollars ($500,000,000.00) in prior calendar year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(h) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than Five Hundred Million Dollars ($500,000,000.00) may make application to the commissioner for a waiver from the requirements of this section based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from the requirements of this section with the states that it is licensed or doing business.

(i) An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written and assumed premium is below the threshold and subsequently becomes subject to one (1) of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded to comply with the independence requirements. Likewise, an insurer that becomes subject to one (1) of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements.

SOURCES: Laws, 2009, ch. 334, § 8, eff from and after Jan. 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the first and second columns of the table in subsection (g) by substituting "See also Notes A and B" for "See also Note A and B." The Joint Committee ratified the correction at its July 22, 2010, meeting.

§ 83-5-121. Conduct of insurer in connection with the preparation of required reports and documents.

(1) No director or officer of an insurer shall, directly or indirectly:

(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this section; or

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this section.

(2) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this section if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) For purposes of subsection (2) of this section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

(a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards);

(b) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(c) Not to withdraw an issued report; or

(d) Not to communicate matters to an insurer's audit committee.

SOURCES: Laws, 2009, ch. 334, § 9, eff from and after Jan. 1, 2010.

§ 83-5-123. Management's report of internal control over financial reporting.

(1) Every insurer required to file an audited financial report pursuant to this section that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of Five Hundred Million Dollars ($500,000,000.00) or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in Section 83-5-102. The report shall be filed with the commissioner along with the Communication of Internal Control Related Matters Noted in an Audit described under Section 83-5-111. Management's Report of Internal Control over Financial Reporting shall be as of December 31 immediately preceding. Foreign or alien insurers required to file Management's Report of Internal Control over Financial Reporting in another state are exempt from filing the Management's Report of Internal Control over Financial Reporting in this state provided the other state has substantially similar reporting requirements and the Management's Report of Internal Control over Financial Reporting is filed with the commissioner of the other state within the time specified. An insurer or group of insurers that is not required to file Management's Report of Internal Control over Financial Reporting because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded to file a report. Likewise, an insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements.

(2) Notwithstanding the premium threshold in subsection (1), the commissioner may require an insurer to file Management's Report of Internal Control over Financial Reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined by regulation.

(3) An insurer or a group of insurers that is:

(a) Directly subject to Section 404;

(b) Part of a holding company system whose parent is directly subject to Section 404;

(c) Not directly subject to Section 404 but is a SOX Compliant Entity; or

(d) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity;

may file its or its parent's Section 404 Report and an addendum in satisfaction of the requirements of this section provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file (i) a report required pursuant to this section, or (ii) the Section 404 Report and a report required pursuant to this section for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

(4) Management's Report of Internal Control over Financial Reporting shall include:

(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its Internal control over financial reporting;

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

(f) A statement regarding the inherent limitations of internal control systems; and

(g) Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsec-

tion (4) above, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

(a) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation.

(b) Management's Report on Internal Control over Financial Reporting, required by subsection (1) above, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the state insurance department.

SOURCES: Laws, 2009, ch. 334, § 10, eff from and after Jan. 1, 2010.

Federal Aspects — Section 404 of the Sarbanes-Oxley Act of 2002, see 15 USCS § 7262.

§ 83-5-125. Canadian and British companies.

(1) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

(2) For such insurers, the letter required in Section 83-5-106 shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to Section 83-5-101 and shall affirm that the opinion expressed is in conformity with those requirements.

SOURCES: Laws, 2009, ch. 334, § 11, eff from and after Jan. 1, 2010.

PERIODIC FINANCIAL EXAMINATIONS OF INSURERS

SEC.
83-5-201. Purpose of sections 83-5-201 through 83-5-217.
83-5-203. Definitions.
83-5-205. Examination of insurers; scheduling of examinations; examination of foreign or alien insurer; acceptance of examination report prepared by insurance department of another state.
83-5-207. Appointment of examiners; guidelines and procedures to be followed by examiner; insurers to facilitate examination; penalties for refusal to comply with request of examiner; power of examiners; authority of commissioner to hire examiners; company examined to pay cost of examination; authority of commissioner not limited.
83-5-209. Contents of examination report; filing of report; opportunity to respond to report; review of report by and order of commissioner; hearings; confidentiality of examination reports; disclosure of reports.
83-5-211. Appointment of examiners.
83-5-213. Compensation and expenses of examiner.
83-5-215. Reports to be furnished to State Tax Commission; Tax Commission not precluded from performing additional audits.

83-5-217.	No cause of action against examiners; no cause of action against person providing information to examiner; statutory privilege or immunity not abridged; examiner's right to award of attorney fees in civil action.

§ 83-5-201. Purpose of sections 83-5-201 through 83-5-217.

The purpose of Sections 83-5-201 through 83-5-217 is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. Sections 83-5-201 through 83-5-217 are intended to enable the commissioner to adopt a flexible system of examinations which directs resources as may be deemed appropriate and necessary for the administration of the insurance and insurance related laws of this state.

SOURCES: Laws, 1992, ch. 319, § 1, eff from and after July 1, 1992.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-5-203. Definitions.

The following terms as used in Sections 83-5-201 through 83-5-217 shall have the respective meanings hereinafter set forth:

(a) "Commissioner" means the Commissioner of Insurance.

(b) "Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business, and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the commissioner.

(c) "Department" means the Department of Insurance.

(d) "Examiner" means any individual or firm having been authorized by the commissioner to conduct an examination under Sections 83-5-201 through 83-5-217.

(e) "Insurer" means an insurer as the term is used in Section 83-5-1.

(f) "Person" means any individual, aggregation of individuals, trust, association, partnership or corporation, or any affiliate thereof.

SOURCES: Laws, 1992, ch. 319, § 2, eff from and after July 1, 1992.

§ 83-5-205. Examination of insurers; scheduling of examinations; examination of foreign or alien insurer; acceptance of examination report prepared by insurance department of another state.

(1) The commissioner or any of his examiners may conduct an examination under Sections 83-5-201 through 83-5-217 of any company as often as the

commissioner, in his or her sole discretion, deems appropriate but, at a minimum, shall conduct an examination of every insurer licensed in this state not less frequently than once every three (3) years. In scheduling and determining the nature, scope and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners and in effect when the commissioner exercises discretion under this section.

(2) For purposes of completing an examination of any company under Sections 83-5-201 through 83-5-217, the commissioner may examine or investigate any person, or the business of any person, insofar as such examination or investigation, in the sole discretion of the commissioner, is necessary or material to the examination of the company.

(3) In lieu of an examination under Sections 83-5-201 through 83-5-217 of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports may only be accepted if (a) the insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or (b) the examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

SOURCES: Laws, 1992, ch. 319, § 3, eff from and after July 1, 1992.

Cross References — Audit of annual financial statements of insurers, see §§ 83-5-101 et seq.

Additional authority to examine registered insurer or affiliate, see § 83-6-27.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

Examination of domestic fraternal benefit societies, see § 83-29-45.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d Insurance §§ 35, 37.

§ 83-5-207. Appointment of examiners; guidelines and procedures to be followed by examiner; insurers to facilitate examination; penalties for refusal to comply with request of examiner; power of examiners; authority of commissioner to hire examiners; company examined to pay cost of examination; authority of commissioner not limited.

(1) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(2) Every company or person from whom information is sought, its officers, directors and agents, must provide to the examiners appointed under subsection (1) timely, convenient and free access, at all reasonable hours at its offices, to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person must facilitate the examination and aid in the examination, so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any such proceedings for suspension, revocation or refusal of any license or authority shall be conducted in accordance with Section 83-1-29, 83-5-17, 83-5-67, 83-5-83 or 83-21-13.

(3) The commissioner or any of his examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(4) When making an examination under Sections 83-5-201 through 83-5-217, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination.

(5) Nothing contained in Sections 83-5-201 through 83-5-217 shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions made pursuant to

any examination shall be prima facie evidence in any legal or regulatory action.

(6) Nothing contained in Sections 83-5-201 through 83-5-217 shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company work papers or other documents or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner, in his or her sole discretion, may deem appropriate.

SOURCES: Laws, 1992, ch. 319, § 4; Laws, 1997, ch. 410, § 26, eff from and after July 1, 1997.

§ 83-5-209. Contents of examination report; filing of report; opportunity to respond to report; review of report by and order of commissioner; hearings; confidentiality of examination reports; disclosure of reports.

(1) All examination reports shall be comprised of only facts appearing upon the books, records or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within thirty (30) days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of examiner work papers and enter an order:

(a) Adopting the examination report as filed, or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation; or

(b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information and refiling in accordance with subsections (1) and (2) of this section; or

(c) Calling for an investigatory hearing with no less than twenty (20) days' notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(4) All orders entered in accordance with subsection (3)(a) of this section shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order shall be considered a final administrative decision and may be appealed under the Mississippi Administrative Procedures Act and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(5) Any hearing conducted under subsection (3)(c) of this section by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant work papers or by the written submission or rebuttal of the company. Within twenty (20) days of the conclusion of any such hearing, the commissioner shall enter an order in accordance with subsection (3)(a) of this section.

(a) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to examiner work papers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or his representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company or other persons. The documents produced shall be included in the record, and testimony taken by the commissioner or his representative shall be under oath and preserved for the record.

Nothing contained in this section shall require the department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(b) The hearing shall proceed with the commissioner or his representative posing questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant to the investigation. Cross-examination shall be conducted only by the commissioner or his representative. The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice.

(6)(a) Upon the adoption of the examination report under subsection (3)(a) of this section, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of ten (10) days except to the extent provided in subsection (2) of this section. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(b) Nothing contained in Sections 83-5-201 through 83-5-217 shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with Sections 83-5-201 through 83-5-217.

(c) If the commissioner determines that regulatory action is appropriate as a result of any examination, he may initiate any proceedings or actions as provided by law.

(7) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under Sections 83-5-201 through 83-5-217 may be held by the commissioner as a record not required to be made public under the Mississippi Public Records Act.

SOURCES: Laws, 1992, ch. 319, § 5, eff from and after July 1, 1992.

Cross References — Mississippi Public Records Act, see §§ 25-61-1 et seq.

§ 83-5-211. Appointment of examiners.

(1) No examiner may be appointed by the commissioner if such examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under Sections 83-5-201 through 83-5-217. This section shall not be construed to automatically preclude an examiner from being:

(a) A policyholder or claimant under an insurance policy;

(b) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(c) An investment owner in shares of regulated diversified investment companies; or

(d) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

(2) Notwithstanding the requirements of this section the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions, even though such persons may from time to time be similarly employed or retained by persons subject to examination under Sections 83-5-201 through 83-5-217.

SOURCES: Laws, 1992, ch. 319, § 6, eff from and after July 1, 1992.

§ 83-5-213. Compensation and expenses of examiner.

The compensation and expense of such examiner shall not exceed that approved by the National Association of Insurance Commissioners for all examiners on such examinations unless approved by the commissioner. An itemized account of such charges shall be submitted to and approved by the commissioner.

SOURCES: Laws, 1992, ch. 319, § 7; Laws, 1995, ch. 306, § 1, eff from and after passage (approved March 8, 1995).

§ 83-5-215. Reports to be furnished to State Tax Commission; Tax Commission not precluded from performing additional audits.

The results of audits performed hereunder by the commissioner shall be furnished to the State Tax Commission within thirty (30) days of completion. Nothing herein shall be construed to prohibit the State Tax Commission from performing such additional audits or verifications as it may deem necessary to ensure the proper payment of taxes.

SOURCES: Laws, 1992, ch. 319, § 8, eff from and after July 1, 1992.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 83-5-217. No cause of action against examiners; no cause of action against person providing information to examiner; statutory privilege or immunity not abridged; examiner's right to award of attorney fees in civil action.

(1) No cause of action shall arise, nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out Sections 83-5-201 through 83-5-217.

(2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under Sections 83-5-201 through 83-5-217 if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(3) This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection (1) of this section.

(4) A person identified in subsection (1) of this section shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out Sections 83-5-201 through 83-5-217 and the party

bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

SOURCES: Laws, 1992, ch. 319, § 9, eff from and after July 1, 1992.

"INSURABLE INTEREST" REQUIREMENTS

SEC.

83-5-251. Procurer of insurance must have insurable interest; insurable interest defined; insurer reliance on applicant's representations; insurable interest of charitable, etc. organization.
83-5-253. Consent of insured required in certain cases.
83-5-255. Enforcement by commissioner.
83-5-257. Provisions cumulative of existing statutory and common law.

§ 83-5-251. Procurer of insurance must have insurable interest; insurable interest defined; insurer reliance on applicant's representations; insurable interest of charitable, etc. organization.

(1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person, but no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the insured or his personal representatives or to a person having, at the time when such contract was made, an insurable interest in the insured.

(2) If the beneficiary, assignee or other payee under any contract made in violation of this section receives from the insurer any benefits from such contract accruing upon the death, disablement or injury of the insured, the insured or his executor or administrator may maintain an action to recover such benefits from the person so receiving them.

(3) For purposes of Sections 83-5-251 through 83-5-257, "insurable interest" means that a person has an insurable interest in the life, body and health of another individual as follows:

(a) The individual and the insured are related closely by blood or by law, a substantial interest engendered by love and affection;

(b) The person has a lawful and substantial economic interest in having the life, health or bodily safety of the insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the insured;

(c) A party to a contract or option for the purchase or sale of an interest in a business proprietorship, partnership or firm, or of shares of stock of a closed corporation or of an interest in such shares, has an insurable interest in the life, body and health of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may exist as to such individual;

(d) A person has a lawful interest in having the funeral expenses of the insured paid through insurance, provided the insured has knowledge of such insurance; and

(e) Any religious, educational, eleemosynary, charitable or benevolent institution or its agency may be named beneficiary in any policy of life insurance issued by any insurance company upon the life of any individual. A religious, educational, eleemosynary, charitable or benevolent institution or its agency designated as a beneficiary has an insurable interest for the full face of the policy and is entitled to collect the full face of the policy. Such institutions named as beneficiaries in policies issued before July 1, 1992, shall have an insurable interest for the full face of the policy and are entitled to collect the full face of the policy.

(4) An insurer shall be entitled to rely upon all reasonable statements, declarations and representations made by an applicant for insurance relative to the existence of an insurable interest; and no insurer shall incur legal liability except as set forth in the policy, by virtue of any untrue statements, declarations or representations so relied upon in good faith by the insurer.

(5) "Person" as used herein means artificial as well as natural persons, includes all public and private corporations as well as individuals, and includes a trust whose principal beneficiaries have an "insurable interest" as used herein. Any trust with policies issued after July 1, 1992, shall be deemed persons under this section.

SOURCES: Laws, 1992, ch. 522, § 1; Laws, 1993, ch. 400, § 1, eff from and after passage (approved March 15, 1993).

RESEARCH REFERENCES

ALR. Validity of assignment of life insurance policy to one who has no insurable interest in insured. 30 A.L.R.2d 1310.

Insurable interest of partner or partnership in life of partner. 70 A.L.R.2d 577.

Insurable interest of brother or sister in life of sibling. 60 A.L.R.3d 98.

Estoppel of, or waiver by, issuer of life insurance policy to assert defense of lack of insurable interest. 86 A.L.R.4th 828.

Am Jur. 44 Am. Jur. 2d, Insurance §§ 978-1005.

CJS. 44 C.J.S., Insurance §§ 288-305.

JUDICIAL DECISIONS

1. Proof required.
2. Insurable interest as in loco parentis.

1. Proof required.

Defendant failed to establish an "insurable interest" under Miss. Code Ann. § 83-5-251(3) of the life of an insured because he did not complete the process for guardianship under Miss. Code Ann. § 93-13-17 and he failed to establish a legal relationship or an economic interest in the continued life of the insured. First Colony Life Ins. Co. v. Sanford, 480 F. Supp. 2d 870 (S.D. Miss. 2007), reversed by, remanded by 555 F.3d 177, 2009 U.S. App. LEXIS 341 (5th Cir. Miss. 2009).

2. Insurable interest as in loco parentis.

Even though a formal guardianship over an insured minor was not completed under Miss. Code Ann. § 93-13-17, factual disputes prevented summary judgment as to whether a claimant stood in loco parentis to the insured and as to whether other factors could have led to the claimant having an insurable interest under Miss. Code Ann. §§ 83-5-251 and 83-5-253 in the insured's life so as to allow the claimant to recover life insurance proceeds after the death of the insured. First Colony Life Ins. Co. v. Sanford, 555 F.3d 177 (5th Cir. 2009).

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-5-253. Consent of insured required in certain cases.

No life or health insurance contract upon an individual, except a contract of group life insurance or annuity or of group health insurance, or replacement contracts, shall be made or effectuated, unless at the time of the making of the contract the insured, applies therefor or has consented thereto in writing or has had the application acknowledged in writing by the insurance company, except that any person having an insurable interest in the life of a minor or any person upon whom a minor is dependent for support and maintenance may effectuate insurance upon the life of or pertaining to such minor.

SOURCES: Laws, 1992, ch. 522, § 2, eff from and after July 1, 1992.

JUDICIAL DECISIONS

1. In loco parentis creating an insurable interest.

Even though a formal guardianship over an insured minor was not completed under Miss. Code Ann. § 93-13-17, factual disputes prevented summary judgment as to whether a claimant stood in loco parentis to the insured and as to whether other factors could have led to the claimant having an insurable interest under Miss. Code Ann. §§ 83-5-251 and 83-5-253 in the insured's life so as to allow the claimant to recover life insurance proceeds after the death of the insured. First Colony Life Ins. Co. v. Sanford, 555 F.3d 177 (5th Cir. 2009).

§ 83-5-255. Enforcement by commissioner.

The Commissioner of Insurance is authorized to use any of the powers established under the insurance laws of the state to enforce Sections 83-5-251 through 83-5-257.

SOURCES: Laws, 1992, ch. 522, § 3, eff from and after July 1, 1992.

§ 83-5-257. Provisions cumulative of existing statutory and common law.

Sections 83-5-251 through 83-5-257 are cumulative of existing law in Mississippi, statutory and common law on the question of insurable interest.

SOURCES: Laws, 1992, ch. 522, § 4, eff from and after July 1, 1992.

FILING COPY OF ANNUAL STATEMENT WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS; GENERATION OF REPORTS

SEC.
83-5-301. Applicability of Sections 83-5-301 through 83-5-309.
83-5-303. Annual filings; hardship exemption; foreign insurers.
83-5-305. Civil liability of those dealing with information developed from filings.
83-5-307. Confidentiality.
83-5-309. Failure to file; revocation, suspension or refusal of certificate of authority.

§ 83-5-301. Applicability of Sections 83-5-301 through 83-5-309.

Sections 83-5-301 through 83-5-309 shall apply to all domestic, foreign and alien insurers authorized to transact business in this state.

SOURCES: Laws, 1994, ch. 646, § 1, eff from and after passage (approved April 8, 1994).

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-5-303. Annual filings; hardship exemption; foreign insurers.

(1)(a) Each domestic, foreign and alien insurer authorized to transact insurance in this state shall annually on or before March 1 of each year, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with such additional filings as prescribed by the Commissioner of Insurance for the preceding year. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the Commissioner of Insurance and shall include the signed jurat page and the actuarial certification. Any amendments and addenda to the annual statement filing subsequently filed with the Commissioner of Insurance shall also be filed with the National Association of Insurance Commissioners.

(b) The Commissioner of Insurance may grant a hardship exemption to any domestic industrial life company transacting business in Mississippi only. No exemption shall be granted to any industrial life company transacting business across state lines.

(2) Foreign insurers that are domiciled in a state which has a law substantially similar to subsection (1) of this section shall be deemed in compliance with this section.

SOURCES: Laws, 1994, ch. 646, § 2, eff from and after passage (approved April 8, 1994).

§ 83-5-305. Civil liability of those dealing with information developed from filings.

In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees and task forces, their delegates, National Association of Insurance Commissioners employees and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the Commissioner of Insurance under the authority of Sections 83-5-301 through 83-5-309 and, while performing such tasks, shall be subject to civil liability only to the same extent as the Commissioner of Insurance.

SOURCES: Laws, 1994, ch. 646, § 3, eff from and after passage (approved April 8, 1994).

§ 83-5-307. Confidentiality.

All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the Department of Insurance by the National Association of Insurance Commissioners' Insurance Regulatory Information System are confidential and may not be disclosed by the department.

SOURCES: Laws, 1994, ch. 646, § 4, eff from and after passage (approved April 8, 1994).

§ 83-5-309. Failure to file; revocation, suspension or refusal of certificate of authority.

The Commissioner of Insurance may suspend, revoke or refuse to renew the certificate of authority of any insurer failing to file its annual statement when due or within any extension of time which the commissioner, for good cause, may have granted.

SOURCES: Laws, 1994, ch. 646, § 5, eff from and after passage (approved April 8, 1994).

DISCLOSURE OF MATERIAL ACQUISITIONS, DISPOSITIONS OF ASSETS, AND REINSURANCE AGREEMENTS

SEC.
83-5-351. Filing report; disclosure of material acquisitions and dispositions.
83-5-353. Reporting of material acquisitions or dispositions of assets.
83-5-355. No reporting of nonrenewals; cancellations; or revisions of ceded reinsurance agreements.
83-5-357. Promulgation of rules and regulations.

§ 83-5-351. Filing report; disclosure of material acquisitions and dispositions.

(1) Every insurer domiciled in this state shall file a report with the Commissioner of Insurance disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval or information purposes under other provisions of the insurance laws, regulations or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen (15) days after the end of the calendar month in which any of the transactions described in subsection (1) of this section occur.

(3) One (1) complete copy of the report, including any exhibits or other attachments, shall also be filed with the National Association of Insurance Commissioners.

(4) All reports obtained by or disclosed to the commissioner under Sections 83-5-351 through 83-5-357 shall be confidential and shall not be subject to subpoena and shall not be made public by the commissioner, the National Association of Insurance Commissioners or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer who would be affected notice and an opportunity to be heard, determines that the interest of policy holders, shareholders or the public will be served by publication, in which event the commissioner may publish all or any part in the manner the commissioner determines appropriate.

SOURCES: Laws, 1996, ch. 354, § 1, eff from and after July 1, 1996.

RESEARCH REFERENCES

Am Jur. 43Am Jur 2d, Insurance §§ 519, 807.

44 Am. Jur. 2d, Insurance §§ 1131, 1140, 1559, 1889, 2063.

CJS. 44 C.J.S., Insurance §§ 479, 480.

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-5-353. Reporting of material acquisitions or dispositions of assets.

(1) No acquisitions or dispositions of assets need be reported under Section 83-5-351 if the acquisitions or dispositions are not material. For purposes of Sections 83-5-351 through 83-5-357, a material acquisition or the aggregate of any series of related acquisitions during any thirty-day period or disposition or the aggregate of any series of related dispositions during any thirty-day period is one that is nonrecurring and not in the ordinary course of business and involves more than five percent (5%) of the reporting insurer's

total admitted assets as reported in its most recent financial statement filed with the commissioner.

(2)(a) Asset acquisitions subject to Sections 83-5-351 through 83-5-357 include every purchase, lease, exchange, merger, consolidation, succession or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.

(b) Asset dispositions subject to Sections 83-5-351 through 83-5-357 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment whether for the benefit of creditors or otherwise, abandonment, destruction or other disposition.

(3)(a) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

(i) Date of the transaction;

(ii) Manner of acquisition or disposition;

(iii) Description of the assets involved;

(iv) Nature and amount of the consideration given or received;

(v) Purpose of, or reason for, the transaction;

(vi) Manner by which the amount of consideration was determined;

(vii) Gain or loss recognized or realized as a result of the transaction; and

(viii) Name(s) of the person(s) from whom the assets were acquired or to whom they were disposed.

(4) Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than One Million Dollars ($1,000,000.00) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

SOURCES: Laws, 1996, ch. 354, § 2, eff from and after July 1, 1996.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 802.

44 Am. Jur. 2d, Insurance §§ 1131, 1140, 1559, 1889, 2063.

CJS. 44 C.J.S., Insurance §§ 238, 239.

§ 83-5-355. No reporting of nonrenewals; cancellations; or revisions of ceded reinsurance agreements.

(1) No nonrenewals, cancellations or revisions of ceded reinsurance agreements need be reported under Section 83-5-351 if the nonrenewals, cancellations or revisions are not material. For purposes of Sections 83-5-351 through 83-5-357, a material nonrenewal, cancellation or revision is one that affects:

(a) As respects property and casualty business, including accident and health business written by a property and casualty insurer:

(i) More than fifty percent (50%) of the insurer's total ceded written premium; or

(ii) More than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves.

(b) As respects life, annuity, and accident and health business: more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.

(c) As respects either property and casualty or life, annuity, and accident and health business, either of the following events shall constitute a material revision which must be reported:

(i) An authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one or more unauthorized reinsurers; or

(ii) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent (10%) of a total cession.

(2) However, no filing shall be required if:

(a) As respects property and casualty business, including accident and health business written by a property and casualty insurer: the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business, or

(b) As respects life, annuity, and accident and health business: the total reserve credit taken from business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirement before any cession.

(3) The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of ceded reinsurance agreements:

(a) Effective date of the nonrenewal, cancellation or revision;

(b) The description of the transaction with an identification of the initiator thereof;

(c) Purpose of, or reason for, the transaction; and

(d) If applicable, the identity of the replacement reinsurers.

(4) Insurers are required to report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a

pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than One Million Dollars ($1,000,000.00) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

SOURCES: Laws, 1996, ch. 354, § 3, eff from and after July 1, 1996.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 802.

44 Am. Jur. 2d, Insurance §§ 1131, 1140, 1559, 1889, 2063.

§ 83-5-357. Promulgation of rules and regulations.

The commissioner, after notices and hearings, may promulgate rules and regulations necessary to carry out the provisions of Sections 83-5-351 through 83-5-357.

SOURCES: Laws, 1996, ch. 354, § 4, eff from and after July 1, 1996.

RISK-BASED CAPITAL LEVEL REQUIREMENTS

SEC.
83-5-401. Definitions.
83-5-403. Filing of RBC report; determination of insurer's RBC; maintenance of capital above prescribed RBC level; adjustment of report.
83-5-405. Procedure upon occurrence of company action level event.
83-5-407. Procedure upon occurrence of regulatory action level event.
83-5-409. Procedure upon occurrence of authorized control level event.
83-5-411. Procedure upon occurrence of mandatory control level event.
83-5-413. Hearings.
83-5-415. Confidentiality of reports and plans; sharing and using confidential information; publication, dissemination, etc., of information regarding capital level of insurer; rebuttal by insurer of materially false statement regarding capital level; use by commissioner of RBC instructions, reports and plans.
83-5-417. Relationship with other laws; promulgation of rules and regulations; exemption of domestic insurers.
83-5-419. Filing of RBC report or plan by foreign insurer.
83-5-421. Liability of commissioner, department, employees or agents.
83-5-423. Severability of provisions.
83-5-425. Effective date of notices.
83-5-427. Requirements for RBC reports for 1996.

§ 83-5-401. Definitions.

As used in Sections 83-5-401 through 83-5-427, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Adjusted RBC report" means a risk-based capital report which has been adjusted by the commissioner in accordance with Section 83-5-403(5).

(b) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(c) "Domestic insurer" means any insurance company domiciled in this state.

(d) "Foreign insurer" means any insurance company which is licensed to do business in this state under Section 83-21-1 et seq., but is not domiciled in this state.

(e) "NAIC" means the National Association of Insurance Commissioners.

(f) "Life and/or health insurer" means any insurance company licensed under Section 83-19-1 et seq., or a licensed property and casualty insurer writing only accident and health insurance.

(g) "Property and casualty insurer" means any insurance company licensed under Section 83-19-1 et seq., but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) "Negative trend" means, with respect to a life and/or health insurer, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the Life RBC instructions.

(i) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as such RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(j) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(i) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(ii) "Regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(iii) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(iv) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(k) "RBC plan" means a comprehensive financial plan containing the elements specified in Section 83-5-405(2). If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(*l*) "RBC report" means the report required in Section 83-5-403.

(m) "Total adjusted capital" means the sum of:

(i) An insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under Section 83-5-55; and

(ii) Such other items, if any, as the RBC instructions may provide.

SOURCES: Laws, 1996, ch. 478, § 1; Laws, 2010, ch. 340, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, corrected the section reference in (a); and inserted "Life" in (h).

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-5-403. Filing of RBC report; determination of insurer's RBC; maintenance of capital above prescribed RBC level; adjustment of report.

(1) Every domestic insurer shall, on or before each March 1, the filing date, prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

(ii) The filing date.

(2) A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account, and may adjust for the covariance between, the following factors determined in each case by applying the factors in the manner set forth in the RBC instructions.

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(3) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account, and may adjust for the covariance between, determined in each case by applying the factors in the manner set forth in the RBC instructions:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(4) An excess of capital over the amount produced by the risk-based capital requirements contained in Sections 83-5-401 through 83-5-427 and the formulas, schedules and instructions referenced in Sections 83-5-401 through 83-5-427, is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by Sections 83-5-401 through 83-5-427. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in Sections 83-5-401 through 83-5-427.

(5) If a domestic insurer files a RBC report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A RBC report as so adjusted is referred to as an "adjusted RBC report."

SOURCES: Laws, 1996, ch. 478, § 2; Laws, 2010, ch. 340, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote (4), which read: "Insurers may maintain capital above the RBC levels required by Sections 83-5-401 through 83-5-427."

§ 83-5-405. Procedure upon occurrence of company action level event.

(1) "Company action level event" means any of the following events:

(a) The filing of a RBC report by an insurer which indicates that:

(i) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(ii) If a life and/or health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 2.5 and has a negative trend; or

(iii) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty RBC instructions;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in paragraph (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under Section 83-5-413; or

(c) If, under Section 83-5-413, an insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner a RBC plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event;

(c) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and surplus. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component;

(d) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted:

(a) Within forty-five (45) days of the company action level event; or

(b) If the insurer challenges an adjusted RBC report under Section 83-5-413, within forty-five (45) days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within sixty (60) days after the submission by an insurer of a RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five (45) days after the notification from the commissioner; or

(b) If the insurer challenges the notification from the commissioner under Section 83-5-413, within forty-five (45) days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may at the commissioner 's discretion, subject to the insurer's right to a hearing under Section 83-5-413, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer that files a RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) Such state has a RBC provision substantially similar to Section 83-5-415(1); and

(b) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under Section 83-5-405(3) and (4).

SOURCES: Laws, 1996, ch. 478, § 3; Laws, 2010, ch. 340, § 3, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added (1)(a)(iii); in (5), substituted "at the commissioner's discretion" for "at the commission's discretion"; and made minor stylistic changes.

Cross References — Reporting requirements for 1996, see § 83-5-427.

§ 83-5-407. Procedure upon occurrence of regulatory action level event.

(1) "Regulatory action level event" means, with respect to any insurer, any of the following events:

(a) The filing of a RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The notification by the commissioner to an insurer of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under Section 83-5-413;

(c) If under Section 83-5-413, the insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to file a RBC report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;

(e) The failure of the insurer to submit a RBC plan to the commissioner within the time period set forth in Section 83-5-405(3);

(f) Notification by the commissioner to the insurer that;

(i) The RBC plan or revised RBC plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and

(ii) Such notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under Section 83-5-413;

(g) If, under Section 83-5-413, the insurer challenges a determination by the commissioner under paragraph (f) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected such challenge;

(h) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the insurer has not challenged the determination under Section 83-5-413; or

(i) If, under Section 83-5-413, the insurer challenges a determination by the commissioner under paragraph (h) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event the commissioner shall:

(a) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the commissioner shall determine are required.

(3) In determining corrective actions, the commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken in accordance with the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five (45) days after the occurrence of the regulatory action level event;

(b) If the insurer challenges an adjusted RBC report under Section 83-5-413 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised RBC plan under Section 83-5-413 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer's RBC plan or revised RBC plan, examine or analyze the assets, liabilities and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the commissioner.

SOURCES: Laws, 1996, ch. 478, § 4, eff from and after July 1, 1996.

Cross References — Reporting requirements for 1996, see § 83-5-427.

§ 83-5-409. Procedure upon occurrence of authorized control level event.

(1) "Authorized control level event" means any of the following events:

(a) The filing of a RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, if the insurer does not challenge the adjusted RBC report under Section 83-5-413;

(c) Under Section 83-5-413, the insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge;

(d) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order if the insurer has not challenged the corrective order under Section 83-5-413; or

(e) If the insurer has challenged a corrective order under Section 83-5-413 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(2) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(a) Take such actions as are required under Section 83-5-407 regarding an insurer with respect to which a regulatory action level event has occurred; or

(b) If the commissioner determines it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control under Section 83-24-1 et seq. In the event the commissioner takes such actions, the authorized control level event shall be deemed sufficient grounds for the commissioner to take action under Section 83-24-1 et seq., and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in Section 83-24-1 et seq. In the event the commissioner takes actions under this paragraph under an adjusted RBC report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of Section 83-24-1 et seq., pertaining to summary proceedings.

SOURCES: Laws, 1996, ch. 478, § 5, eff from and after July 1, 1996.

Cross References — Procedure upon occurrence of regulatory action level event, see § 83-5-407.

Reporting requirements for 1996, see § 83-5-427.

§ 83-5-411. Procedure upon occurrence of mandatory control level event.

(1) "Mandatory control level event" means any of the following events:

(a) The filing of a RBC report which indicates that the insurer's total adjusted capital is less than its mandatory control level RBC.

(b) Notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, if the insurer does not challenge the adjusted RBC report under Section 83-5-413; or

(c) If, under Section 83-5-413, the insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.

(2) In the event of a mandatory control level event:

(a) With respect to a life insurer, the commissioner shall take such actions as are necessary to place the insurer under regulatory control under Section 83-24-1 et seq. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under Section 83-24-1 et seq., and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in Section 83-24-1 et seq. If the commissioner takes actions under an adjusted RBC report, the insurer shall be entitled to the protections of law pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

(b) With respect to a property and casualty insurer, the commissioner shall take such actions as are necessary to place the insurer under regulatory control under Section 83-24-1 et seq., or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under Section 83-24-1 et seq., and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in Section 83-24-1 et seq. If the commissioner takes actions under an adjusted RBC report, the insurer shall be entitled to the protections of law pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

SOURCES: Laws, 1996, ch. 478, § 6, eff from and after July 1, 1996.

Cross References — Reporting requirements for 1996, see § 83-5-427.

§ 83-5-413. Hearings.

In order to maintain the integrity of proceedings and prevent undue advantage to a competitor by disclosure of proprietary information, the insurer shall have the right to a confidential departmental hearing, on a record, at which the insurer may challenge any determination or action by the commissioner after notification by the commissioner as provided in this section. The insurer shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner under paragraph (a), (b), (c) or (d) of this section. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than ten (10) nor more than thirty (30) days after the date of the insurer's request.

The notifications are as follows:

(a) Notification to an insurer by the commissioner of an adjusted RBC report; or

(b) Notification to an insurer by the commissioner that:

(i) The insurer's RBC plan or revised RBC plan is unsatisfactory; and

(ii) Such notification constitutes a regulatory action level event with respect to such insurer; or

(c) Notification to any insurer by the commissioner that the insurer has failed to adhere to its RBC plan or revised RBC plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

(d) Notification to an insurer by the commissioner of a corrective order with respect to the insurer.

SOURCES: Laws, 1996, ch. 478, § 7, eff from and after July 1, 1996.

Cross References — Procedure upon occurrence of company action level event, see § 83-5-405.

Procedure upon occurrence of regulatory action level event, see § 83-5-407.

Procedure upon occurrence of authorized control level event, see § 83-5-409.
Procedure upon occurrence of mandatory control level event, see § 83-5-411.
Effective date of notices, see § 83-5-425.

§ 83-5-415. Confidentiality of reports and plans; sharing and using confidential information; publication, dissemination, etc., of information regarding capital level of insurer; rebuttal by insurer of materially false statement regarding capital level; use by commissioner of RBC instructions, reports and plans.

(1) All RBC reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of an insurer performed pursuant hereto and any corrective order issued by the commissioner, as a result of examination or analysis, with respect to any domestic insurer or foreign insurer, which are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors and shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner under Sections 83-5-401 through 83-5-427 or any other provision of the insurance laws of this state. All RBC reports and RBC plans filed with the commissioner shall be privileged and exempt from the provisions of the Mississippi Public Records Act in accordance with Section 25-61-11.

(2) In order to assist in the performance of the commissioner's duties, the commissioner:

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (1) of this section, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(b) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(c) May enter into agreements governing sharing and using information consistent with this subsection (2).

(3) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the

commissioner under this section or as a result of sharing as authorized in subsection (2) of this section.

(4) The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool which may indicate the need for corrective action with respect to the insurer and is not intended as a means to rank insurers generally. Except as otherwise required under the provisions of Sections 83-5-401 through 83-5-427, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker or other person engaged in any manner in the insurance business is prohibited. If any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC levels, or any of them, or an inappropriate comparison of any other amount to the insurers' RBC levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(5) RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or an affiliate is authorized to write.

SOURCES: Laws, 1996, ch. 478, § 8; Laws, 2010, ch. 340, § 4, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, added (2) and (3), and redesignated the remaining subsections accordingly.

Cross References — Mississippi Public Records Act, see §§ 25-61-1 et seq.

Procedure upon occurrence of company action level event, see § 83-5-405.

§ 83-5-417. Relationship with other laws; promulgation of rules and regulations; exemption of domestic insurers.

(1) The provisions of Sections 83-5-401 through 83-5-427 are supplemental to any other provisions of the laws of this state and shall not preclude or limit any other powers or duties of the commissioner under such laws.

(2) The commissioner may promulgate rules and regulations necessary for the implementation of Sections 83-5-401 through 83-5-427.

(3) The commissioner may exempt from the application of Sections 83-5-401 through 83-5-427 any domestic insurer that:

(a) Writes direct business only in this state;

(b) Writes direct annual premiums of Two Million Dollars ($2,000,000.00) or less; and

(c) Assumes no reinsurance in excess of five percent (5%) of direct premium written.

SOURCES: Laws, 1996, ch. 478, § 9, eff from and after July 1, 1996.

§ 83-5-419. Filing of RBC report or plan by foreign insurer.

(1) Any foreign insurer, upon the written request of the commissioner, shall submit to the commissioner a RBC report as of the end of the calendar year just ended the later of:

(a) The date a RBC report would be required to be filed by a domestic insurer under Sections 83-5-401 through 83-5-427; or

(b) Fifteen (15) days after the request is received by the foreign insurer.

Any foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(2) In the event of a company action level event, regulatory action level event or authorized control level event with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer, or, if no RBC statute is in force in that state, under the provisions of Sections 83-5-401 through 83-5-427, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file a RBC plan in the manner specified under that state's RBC statute, or if no RBC statute is in force in that state, under Section 83-5-405, the commissioner may require the foreign insurer to file a RBC plan with the commissioner. In such event, the failure of the foreign insurer to file a RBC plan with the commissioner shall be grounds to order the insurer to cease writing new insurance business in this state.

(3) In the event of a mandatory control level event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the court as permitted under Section 83-24-1 et seq., with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory control level event shall be considered adequate grounds for the application.

SOURCES: Laws, 1996, ch. 478, § 10, eff from and after July 1, 1996.

§ 83-5-421. Liability of commissioner, department, employees or agents.

There shall be no liability on the part of, and no cause of action shall arise against, the commissioner or the insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under Sections 83-5-401 through 83-5-427.

SOURCES: Laws, 1996, ch. 478, § 11, eff from and after July 1, 1996.

§ 83-5-423. Severability of provisions.

If any provision of Sections 83-5-401 through 83-5-427, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of Sections 83-5-401 through 83-5-427 which can be given effect without the invalid provision or application, and to that end the provisions of Sections 83-5-401 through 83-5-427 are severable.

SOURCES: Laws, 1996, ch. 478, § 12, eff from and after July 1, 1996.

§ 83-5-425. Effective date of notices.

All notices by the commissioner to an insurer which may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmissions shall be effective upon the insurer's receipt of such notice.

SOURCES: Laws, 1996, ch. 478, § 13, eff from and after July 1, 1996.

§ 83-5-427. Requirements for RBC reports for 1996.

(1) For RBC reports required to be filed by life insurers with respect to 1996, the following requirements shall apply in lieu of the provisions of Sections 83-5-405, 83-5-407, 83-5-409, and 83-5-411.

(a) In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder.

(b) In the event of a regulatory action level event under Section 83-5-407(1)(a), (b) or (c), the commissioner shall take the actions required under Section 83-5-405.

(c) In the event of a regulatory action level event under Section 83-5-407(1)(d), (e), (f), (g), (h) or (i), or an authorized control level event, the commissioner shall take the actions required under § 83-5-407 with respect to the insurer.

(d) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under Section 83-5-409 with respect to the insurer.

(2) For RBC reports required to be filed by property and casualty insurers with respect to 1996, the following requirements shall apply in lieu of the provisions of Sections 83-5-405, 83-5-407, 83-5-409, and 83-5-411:

(a) In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder.

(b) In the event of a regulatory action level event under Section 83-5-407(1)(a), (b) or (c), the commissioner shall take the actions required under Section 83-5-405.

(c) In the event of a regulatory action level event under Section 83-5-407(1)(d), (e), (f), (g), (h) or (i), or an authorized control level event, the commissioner shall take the actions required under § 83-5-407 with respect to the insurer.

(d) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under Section 83-5-409 with respect to the insurer.

SOURCES: Laws, 1996, ch. 478, § 14, eff from and after July 1, 1996.

PROPERTY AND CASUALTY ACTUARIAL OPINION ACT

SEC.

83-5-501. Title [Repealed effective June 30, 2012].
83-5-503. Actuarial opinion of reserves and supporting documentation [Repealed effective June 30, 2012].
83-5-505. Confidentiality [Repealed effective June 30, 2012].
83-5-507. Repeal of §§ 83-5-501 through 83-5-507 [Repealed effective June 30, 2012].

§ 83-5-501. Title [Repealed effective June 30, 2012].

Sections 83-5-501 through 83-5-505 shall be known as the "Property and Casualty Actuarial Opinion Act."

SOURCES: Laws, 2009, ch. 441, § 1, eff from and after Jan. 1, 2010.

Editor's Note — For repeal of this section, see § 83-5-507.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-5-503. Actuarial opinion of reserves and supporting documentation [Repealed effective June 30, 2012].

(1) Statement of Actuarial Opinion. Every property and casualty insurance company doing business in this state, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an appointed

actuary entitled "Statement of Actuarial Opinion." This opinion shall be filed in accordance with the appropriate National Association of Insurance Commissioners (NAIC) Property and Casualty Annual Statement Instructions.

(2) Actuarial Opinion Summary.

(a) Every property and casualty insurance company domiciled in this state that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and shall be considered as a document supporting the actuarial opinion required in subsection (1).

(b) A company licensed but not domiciled in this state shall provide the actuarial opinion summary upon request.

(3) Actuarial Report and Workpapers.

(a) An actuarial report and underlying workpapers as required by the appropriate NAIC Property and Casualty Annual Statement Instructions shall be prepared to support each actuarial opinion.

(b) If the insurance company fails to provide a supporting actuarial report and/or workpapers at the request of the commissioner or the commissioner determines that the supporting actuarial report or workpapers provided by the insurance company is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or workpapers.

(4) The appointed actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

SOURCES: Laws, 2009, ch. 441, § 2, eff from and after Jan. 1, 2010.

Editor's Note — For repeal of this section, see § 83-5-507.

§ 83-5-505. Confidentiality [Repealed effective June 30, 2012].

(1) The statement of actuarial opinion shall be provided with the annual statement in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and shall be treated as a public document.

(2)(a) Documents, materials or other information in the possession or control of the Department of Insurance that are considered an actuarial report, workpapers or actuarial opinion summary provided in support of the opinion, and any other material provided by the company to the commissioner in connection with the actuarial report, workpapers or actuarial opinion summary, shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(b) This section shall not be construed to limit the commissioner's authority to release the documents to the Actuarial Board for Counseling and Discipline (ABCD) so long as the material is required for the purpose of professional disciplinary proceedings and that the ABCD establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents, nor shall this section be construed to limit the commissioner's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(3) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (2).

(4) In order to assist in the performance of the commissioner's duties, the commissioner:

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (2) with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information and has the legal authority to maintain confidentiality;

(b) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(c) May enter into agreements governing sharing and use of information consistent with subsections (2), (3) and (4).

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (4).

SOURCES: Laws, 2009, ch. 441, § 3, eff from and after Jan. 1, 2010.

Editor's Note — For repeal of this section, see § 83-5-507.

Cross References — Mississippi Public Records Act, see §§ 25-61-1 et seq.

§ 83-5-507. Repeal of §§ 83-5-501 through 83-5-507 [Repealed effective June 30, 2012].

Sections 83-5-501 through 83-5-507 shall stand repealed from and after June 30, 2012.

SOURCES: Laws, 2009, ch. 441, § 4, eff from and after Jan. 1, 2010.

CHAPTER 6

Registration and Examination of Insurers

Sec.
83-6-1. Definitions.
83-6-2. Subsidiaries which may be organized or acquired; permissible investments.
83-6-3. Insurers required to register; time for registration; data may be required of other insurers.
83-6-5. Registration statement; filing, form and contents.
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83-6-15. Exemption of insurer, information or transaction from application of §§ 83-6-3 through 83-6-19.
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83-6-21. Standards for transactions within holding company system; notice to commissioner of certain intended transactions; action by commissioner against violators; stock company permits.
83-6-23. Factors to be considered in determining reasonableness of insurer's surplus.
83-6-24. Filing of statement by person making offer, request, etc.; contents of statement; approval by commissioner; exceptions; violations of section; jurisdiction of courts.
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83-6-37. When commissioner may take possession and conduct business of domestic insurer.
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83-6-39. Suspension, revocation or refusal to renew license or certificate of authority.
83-6-41. Appeals to chancery court; petition for writ in nature of mandamus or peremptory mandamus.
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§ 83-6-1. Definitions.

As used in this chapter the following terms have the respective meanings herein set forth unless the context shall require otherwise:

(a) An "affiliate of" or person "affiliated" with a specific person means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) "Commissioner" means the Commissioner of Insurance.

(c) "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, unless the power is the result of an official position with or corporate office held by the person. "Control" shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided in Section 83-6-17 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) An "insurance holding company system" consists of two (2) or more affiliated persons, one or more of which is an insurer.

(e) "Insurer" means only those companies subject to the jurisdiction of the commissioner as provided in Section 83-5-1; however, burial associations regulated pursuant to Chapter 37 of Title 83 are excluded from this definition.

(f) "Person" means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(g) A "security holder" of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) "Subsidiary" of a specified person means an affiliate controlled by a person, directly or indirectly, through one or more intermediaries.

(i) The term "voting security" includes any security convertible into or evidencing a right to acquire a voting security.

SOURCES: Laws, 1974, ch. 366, § 1; Laws, 1992, ch. 573, § 1; Laws, 1997, ch. 410, § 8, eff from and after July 1, 1997.

Cross References — Department of insurance generally, see §§ 83-1-1 et seq.
Insurance companies generally, see §§ 83-5-1 et seq.
Life insurance generally, see §§ 83-7-1 et seq.
Accident and health insurance generally, see §§ 83-9-1 et seq.
Domestic companies generally, see §§ 83-19-1 et seq.

Foreign companies generally, see §§ 83-21-1 et seq.

Insurers Rehabilitation and Liquidation Act, see §§ 83-24-1 et seq.

Requirements for acquiring control of converted mutual insurance company, see § 83-31-141.

Merger or consolidation of mutual insurance holding companies, see § 83-31-157.

Application of definition of "control" or "controlled" as defined in this section to Business Transacted with Producer Controlled Insurer Act, see § 83-59-3.

RESEARCH REFERENCES

ALR. Public regulation or control of insurance agents or brokers. 10 A.L.R.2d 950.

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

Am Jur. 43 Am. Jur. 2d, Insurance § 4.

CJS. 44 C.J.S., Insurance §§ 1-75.

§ 83-6-2. Subsidiaries which may be organized or acquired; permissible investments.

(1) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

(a) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;

(b) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;

(c) Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(d) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;

(e) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;

(f) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;

(g) Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;

(h) Ownership and management of assets which the parent corporation could itself own or manage;

(i) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;

(j) Financing of insurance premiums, agents and other forms of consumer financing;

(k) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; or

(*l*) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

(2) In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under Chapter 573, Laws of 1992, a domestic insurer may also:

(a) Invest, in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of such insurer's assets or fifty percent (50%) of such insurer's surplus as regards policyholders, provided that after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(i) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and

(ii) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;

(b) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subsection (2)(a). For the purpose of Chapter 573, Laws of 1992, "the total investment of the insurer" shall include:

(i) Any direct investment by the insurer in an asset, and

(ii) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary;

(c) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after such investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(3) Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (1) or (2) above shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in Section 83-19-51, Mississippi Code of 1972.

(4) Whether any investment pursuant to subsection (2) meets the applicable requirements thereof is to be determined before such investment is

made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(5) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of Chapter 573, Laws of 1992, and the insurer has notified the commissioner thereof.

SOURCES: Laws, 1992, ch. 573, § 4, eff from and after July 1, 1992.

Editor's Note — For a complete list of sections affected by Chapter 573, Laws of 1992, see the Statutory Tables volume, Table B, Allocation of Acts, 1992 Session.

Cross References — Stock of subsidiary corporation of insurer not to be valued at amount in excess of net value based upon assets eligible under this section, see § 83-5-117.

Mutual insurance holding company investments, see § 83-31-167.

Federal Aspects — Securities Exchange Act of 1934, see 15 USCS §§ 78a et seq.

Investment Company Act of 1940, see 15 USCS §§ 80a-1 et seq.

§ 83-6-3. Insurers required to register; time for registration; data may be required of other insurers.

Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in Sections 83-6-3 through 83-6-19, is required to register with the commissioner. Any insurer which is subject to registration under Sections 83-6-3 through 83-6-19 is required to register within sixty (60) days after July 1, 1974, or fifteen (15) days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under Sections 83-6-3 through 83-6-19 to furnish a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

SOURCES: Laws, 1974, ch. 366, § 267, eff from and after July 1, 1974.

RESEARCH REFERENCES

ALR. Public regulation or control of insurance agents or brokers. 10 A.L.R.2d 950.

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance §§ 76-80.

§ 83-6-5. Registration statement; filing, form and contents.

Every insurer subject to registration is required to file a registration statement on a form provided by the commissioner which shall contain current information setting forth:

(a) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(b) The identity of every member of the insurance holding company system;

(c) The following agreements in force, relationships subsisting and transactions currently outstanding between such insurer and its affiliates:

(i) Loans, other investments or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; and

(vi) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(d) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

SOURCES: Laws, 1974, ch. 366, § 2(2), eff from and after July 1, 1974.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance §§ 76-83, 96.

§ 83-6-7. Registration statement; immaterial information need not be disclosed; items deemed to be immaterial.

No information need be disclosed on the registration statement filed pursuant to Section 83-6-5 if such information is not material for the purposes of Sections 83-6-3 through 83-6-19. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit or investments involving one-half of one percent (½ of 1%) or less of an insurer's admitted assets as of the thirty-first day of December next preceding are not to be deemed material for purposes of Sections 83-6-3 through 83-6-19.

SOURCES: Laws, 1974, ch. 366, § 2(3), eff from and after July 1, 1974.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance §§ 76-83, 96.

§ 83-6-9. Registration statement; report of material changes or additions on amendment forms.

Each registered insurer is required to keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition.

SOURCES: Laws, 1974, ch. 366, § 2(4), eff from and after July 1, 1974.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance §§ 76-83, 96.

§ 83-6-11. Termination of registration of insurer no longer member of insurance holding company system; consolidated registration statement or amendment by affiliated insurers.

(1) The commissioner is required to terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(2) The commissioner may require or allow two (2) or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement on their individual registration statements.

SOURCES: Laws, 1974, ch. 366, § 2(5, 6), eff from and after July 1, 1974.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-6-13. Insurer may register on behalf of affiliated insurer, when.

The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Section 83-6-3 and to file all information and material required to be filed under Sections 83-6-3 through 83-6-19.

SOURCES: Laws, 1974, ch. 366, § 2(7), eff from and after July 7, 1974.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance §§ 76-83, 96.

§ 83-6-15. Exemption of insurer, information or transaction from application of §§ 83-6-3 through 83-6-19.

The provisions of Sections 83-6-3 through 83-6-19 do not apply to any insurer, information or transaction if and to the extent that the commissioner, by rule, regulation or order, exempts the same from the provisions of Sections 83-6-3 through 83-6-19.

SOURCES: Laws, 1974, ch. 366, § 2(8), eff from and after July 1, 1974.

Cross References — Publication by commissioner of rules, regulations and orders, see § 83-6-29.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 63, 67, 70.

CJS. 44 C.J.S., Insurance §§ 76-80, 96.

§ 83-6-17. Disclaimer of affiliation; effect of filing; disallowance.

Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer is relieved of any duty to register or report under Sections 83-6-3 through 83-6-19 which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner may disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

SOURCES: Laws, 1974, ch. 366, § 2(9), eff from and after July 1, 1974.

Cross References — Rebuttal of presumption of control by showing made under this section, see § 83-6-1(c).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 67, 70.

CJS. 44 C.J.S., Insurance §§ 76-80, 96.

§ 83-6-19. Failure to file registration statement or amendment as violation.

The failure to file a registration statement or any amendment thereto required by Sections 83-6-3 through 83-6-19 within the time specified for such filing is a violation of Sections 83-6-3 through 83-6-19.

SOURCES: Laws, 1974, ch. 366, § 2(10), eff from and after July 1, 1974.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 69, 70.

CJS. 44 C.J.S., Insurance §§ 93, 124, 139-141.

§ 83-6-21. Standards for transactions within holding company system; notice to commissioner of certain intended transactions; action by commissioner against violators; stock company permits.

(1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(a) The terms shall be fair and reasonable;

(b) Charges or fees for services performed shall be reasonable;

(c) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(d) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system shall not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period

as the commissioner may permit, and the commissioner has not disapproved it within such period:

(a) Sales, purchases, exchanges, loans or extension of credit, guarantees or investments provided such transactions are equal to or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the thirty-first day of December next preceding:

(b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extension of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the thirty-first day of December next preceding;

(c) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the thirty-first day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements that would place control of the insurer outside of the insurance holding company system;

(e) All service contracts or cost-sharing arrangements wherein the annual aggregate cost to the insurer would equal or exceed the amounts specified in paragraph (a) of this subsection.

(3) A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and avoid the review that would occur otherwise. If the commissioner determines that such separate transactions were entered into over any twelve-month period for such purpose, he may exercise his authority under Section 83-6-35.

(4) The commissioner, in reviewing transactions pursuant to subsection (2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.

(5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one corporation if the total

investment in such corporation by the insurance holding company system exceeds ten percent (10%) of such corporation's voting securities.

(6) Insurance companies within a holding company system shall not sell or exchange their stock among each other unless the companies have obtained stock company permits before conducting such transactions.

SOURCES: Laws, 1974, ch. 366, § 3(1); Laws, 1992, ch. 573, § 2; Laws, 1998, ch. 323, § 1, eff from and after July 1, 1998.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 63, 71, 74, 78.

CJS. 44 C.J.S., Insurance §§ 121-123.

§ 83-6-23. Factors to be considered in determining reasonableness of insurer's surplus.

For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, are to be considered:

(a) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(b) The extent to which the insurer's business is diversified among the several lines of insurance;

(c) The number and size of risks insured in each line of business;

(d) The extent of the geographical dispersion of the insurer's insured risks;

(e) The nature and extent of the insurer's reinsurance program;

(f) The quality, diversification and liquidity of the insurer's investment portfolio;

(g) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) The surplus as regards policyholders maintained by other comparable insurers;

(i) The adequacy of the insurer's reserves; and

(j) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

SOURCES: Laws, 1974, ch. 366, § 3(2), eff from and after July 1, 1974.

Cross References — Capital requirement for various classes of domestic companies, see § 83-19-31.

Penalty for failure to report impairment of surplus of domestic company, see § 83-19-75.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 71, 72.

CJS. 44 C.J.S., Insurance §§ 121-123.

§ 83-6-24. Filing of statement by person making offer, request, etc.; contents of statement; approval by commissioner; exceptions; violations of section; jurisdiction of courts.

(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

For the purposes of this section, "a domestic insurer" shall include any person controlling a domestic insurer unless such person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, such person shall file a preacquisition notification with the commissioner containing the information set forth in this section thirty (30) days prior to the proposed effective date of the acquisition. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

(2) The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) is to be effected (hereinafter called "acquiring party"), and

(i) If such person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;

(ii) If such person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (i).

(b) The source, nature and amount of consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

(d) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security referred to in subsection (1) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (1), and a statement as to the method by which the fairness of the proposal was determined.

(f) The amount of each class of any security referred to in subsection (1) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection (1) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(h) A description of the purchase of any security referred to in subsection (1) during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid therefor.

(i) A description of any recommendations to purchase any security referred to in subsection (1) made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(j) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities referred to in subsection (1) and (if distributed) of additional soliciting material relating thereto.

(k) The terms of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (1) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(*l*) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (1) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by paragraphs (a) through (l) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member or person is a corporation, or the person required to file the statement referred to in subsection (1) is a corporation, the commissioner may require that the information called for by paragraphs (a) through (*l*) shall be given with respect to such corporation, each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two (2) business days after the person learns of such change.

(3) If any offer, request, invitation, agreement or acquisition referred to in subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) may utilize such documents in furnishing the information called for by that statement.

(4)(a) The commissioner shall approve any merger or other acquisition of control referred to in subsection (1) unless, after a public hearing thereon, he finds that:

(i) After the change of control, the domestic insurer referred to in subsection (1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(v) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vi) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(b) The public hearing referred to in paragraph (a) of this subsection shall be commenced not less than thirty (30) days after the statement required by subsection (1) is filed, and at least twenty (20) days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven (7) days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within thirty (30) days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(c) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

(5) The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section.

(6) The following shall be violations of this section:

(a) The failure to file any statement, amendment or other material required to be filed pursuant to subsection (1) or (2); or

(b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(7) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who

files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

SOURCES: Laws, 1992, ch. 573, § 5; Laws, 1997, ch. 410, § 9, eff from and after July 1, 1997.

Cross References — Domestic mutual insurance company merger with foreign mutual insurance company, see § 83-31-47.

Federal Aspects — The Securities Act of 1933 is codified as 15 USCS §§ 77a et seq. The Securities Exchange Act of 1934 is codified as 15 USCS §§ 78a et seq.

§ 83-6-25. Restriction on payment of extraordinary dividends or making extraordinary distributions; notice to commissioner.

(1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distributions to its shareholders without first making a written request and receiving written approval for such payment from the commissioner or unless, within the forty-five (45) days after the commissioner has received such written request, the commissioner has not disapproved such payment.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the lesser of: (a) ten percent (10%) of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding; or (b) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer may carry forward net gain from operations, if such insurer is a life insurer, or net income, if such insurer is not a life insurer, from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net gain from operations or the net income, as the case may be, from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon

shareholders until the commissioner has approved the payment of such a dividend or distribution or the commissioner has not disapproved such payment within forty-five (45) days after he has received notice of the declaration.

SOURCES: Laws, 1974, ch. 366, § 3(3); Laws, 1992, ch. 573, § 3; Laws, 2001, ch. 377, § 1, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 63, 71.

CJS. 44 C.J.S., Insurance §§ 121-123.

§ 83-6-27. Financial examination of registered insurer or affiliate.

(1) The commissioner is authorized to order any insurer registered under Sections 83-6-3 through 83-6-19 to produce such records, books, or other information papers in the possession of the insurer or its affiliates which are necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner is authorized to examine such affiliates to obtain such information.

(2) The commissioner shall exercise his authority under subsection (1) of this section only if the interests of the policyholders of such insurer may be adversely affected.

(3) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff which are reasonably necessary to assist in the conduct of the examination under subsection (1) of this section. Any persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

(4) Each registered insurer producing for examination records, books and papers pursuant to subsection (1) of this section is liable for the expense of such examination.

SOURCES: Laws, 1974, ch. 366, § 4; Laws, 2001, ch. 379, § 1, eff from and after July 1, 2001.

Cross References — Examination of foreign insurance companies generally, see §§ 83-1-23, 83-1-27.

Audit of annual financial statements of insurers, see §§ 83-5-101 et seq.

Application of this section to a financial examination of home warranty associations, see § 83-57-31.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 63, 71.

CJS. 44 C.J.S., Insurance §§ 121-123.

§ 83-6-29. Confidential treatment of information, document or copy.

The commissioner, by rule, may designate for confidential treatment any information, documents and copies thereof obtained by or disclosed to himself or any other person in the course of an examination or investigation made pursuant to Section 83-6-27 and any information reported pursuant to Sections 83-6-3 through 83-6-19. Any information, document or copy so designated shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains.

SOURCES: Laws, 1974, ch. 366, § 5, eff from and after July 1, 1974.

RESEARCH REFERENCES

Am Jur. 20 Am. Jur. Pl & Pr Forms (Rev), Privacy, Form 97 (complaint, petition, or declaration-against insurance company-unauthorized transmittal of medical information furnished to insurance company).

§ 83-6-31. Rules, regulations and orders.

The commissioner may, upon notice and opportunity for all interested persons to be heard, promulgate and publish rules, regulations and orders which are necessary to the accomplishment of the provisions of this chapter.

SOURCES: Laws, 1974, ch. 366, § 6, eff from and after July 1, 1974.

§ 83-6-33. Enjoinder of violations; enjoinder of voting of certain securities at shareholder's meeting; sequester of certain voting securities.

(1) Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this chapter or of any rule, regulation or order issued by the commissioner hereunder, the commissioner may apply to chancery court for the county in which the principal office of the insurer is located, or if such insurer has no office in this state, then to the Chancery Court of Hinds County for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this chapter or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(2) No security that is the subject of any agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholder's meeting or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner hereunder, the insurer or the commissioner may apply to the Chancery Court of Hinds County to enjoin any offer, request, invitation, agreement or acquisition made in contravention of any rule, regulation or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.

(3) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, regulation or order issued by the commissioner hereunder, the Chancery Court of Hinds County, on the notice as the court requires, upon the application of the insurer or the commissioner, may seize or sequester any voting securities of the insurer owned directly or indirectly by the person and issue the order with respect thereto as may be appropriate to effectuate the provisions of this chapter. For the purposes of this section, the situs of the ownership of the securities of domestic insurers shall be in this state.

SOURCES: Laws, 1974, ch. 366, § 7; Laws, 1994, ch. 467, § 1, eff from and after July 1, 1994.

Cross References — Injunctions generally, see §§ 11-13-1 et seq.

§ 83-6-35. Willful violations; criminal proceedings; punishment.

Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this chapter, the commissioner may cause criminal proceedings to be instituted in the court having criminal jurisdiction for the county in which the principal office of the insurer is located, or if such insurer has no such office in the state, then in the Circuit Court for the First Judicial District of Hinds County against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this chapter may be fined not more than Five Hundred Dollars ($500.00). Any individual who willfully violates this chapter upon conviction may be fined not more than Five Hundred Dollars ($500.00), or if such willful violation involves the deliberate perpetration of a fraud, may be imprisoned in the state penitentiary for not more than two (2) years, or both.

SOURCES: Laws, 1974, ch. 366, § 8, eff from and after July 1, 1974.

Cross References — Authority for commissioner to proceed against domestic insurer entering into series of transactions to avoid statutory threshold amount and review, see § 83-6-21.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 69, 74, 78.

CJS. 44 C.J.S., Insurance §§ 124, 139-141.

§ 83-6-37. When commissioner may take possession and conduct business of domestic insurer.

Whenever it appears to the commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, the commissioner may proceed as provided in Sections 83-23-1, 83-23-3, 83-23-5 and 83-23-7 to take possession of the property of such domestic insurer and to conduct the business thereof.

SOURCES: Laws, 1974, ch. 366, § 9, eff from and after July 1, 1974.

JUDICIAL DECISIONS

1. In general.

Since under statutes conferring authority on insurance commissioner to act make the interest of the policyholders paramount, immediate action is justified when the policyholder's interest is endangered, and ex parte orders suspending an insurance company's certificate, temporary restraining orders, and temporary appointments ordered without notice are acceptable. State Sec. Life Ins. Co. v. State ex rel. Dale, 498 So. 2d 825 (Miss. 1986).

On complaint filed by the insurance commission, following examination of an insurance company, alleging the insurance company was insolvent and its condition such as to render further business hazardous to the public and to its policyholders, chancellor did not abuse his discretion in granting a temporary restraining order prohibiting the insurance company from further business and appointing the insurance commissioner as its temporary receiver, and in compelling the insurance company and its affiliates to turn over to the insurance commissioner all documents and other records which were requested by the insurance commissioner in writing for the purpose of determining the financial condition and the legality of the conduct of the insurance company and its affiliates. State Sec. Life Ins. Co. v. State ex rel. Dale, 498 So. 2d 825 (Miss. 1986).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 63, 67, 69, 74, 78.

CJS. 44 C.J.S., Insurance §§ 124, 139-141, 197.

§ 83-6-38. Amounts recoverable by receiver upon liquidation or rehabilitation of insurer; limitations; deficiencies due to insolvent debtors.

(1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate of the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary(s) to a director, officer or employee, where the distribution or payment pursuant to (i) or (ii) is made at any time during the one (1) year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of subsections (2), (3) and (4) of this section.

(2) No such distribution shall be recoverable if the parent or affiliate shows that when paid such distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that such distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of distributions or payments which the person received under subsection (1). Any person who otherwise controlled the insurer at the time such distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that any person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from it pursuant to such paragraph, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.

SOURCES: Laws, 1992, ch. 573, § 6, eff from and after July 1, 1992.

§ 83-6-39. Suspension, revocation or refusal to renew license or certificate of authority.

Whenever it appears to the commissioner that any person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or certificates of authority to do business in this state or both for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

SOURCES: Laws, 1974, ch. 366, § 10, eff from and after July 1, 1974.

Cross References — Additional authority to suspend or revoke certificate of authority, see § 83-1-29.

Application of hearing procedures in this section to determination of violation of Managing General Agents Act, see § 83-18-111.

Application of this section to determination of violations of Reinsurance Intermediary Act, see § 83-19-221.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 67, 68, 69.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency-to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance Form 11.1 (petition or application by insurance company against state commissioner of insurance to enjoin further proceedings to suspend or revoke insurance company's certificate of authority).

CJS. 44 C.J.S., Insurance §§ 105-115, 124, 139-141.

§ 83-6-41. Appeals to chancery court; petition for writ in nature of mandamus or peremptory mandamus.

(1) Any person aggrieved by any act, determination, rule, regulation or order or any other action of the commissioner pursuant to this chapter may appeal to the Chancery Court of the First Judicial District of Hinds County.

(2) The filing of an appeal pursuant to this section shall stay the application of any such rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors or the public.

(3) Any person aggrieved by any failure of the commissioner to act or make a determination required by this chapter may petition the Chancery Court of the First Judicial District of Hinds County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

SOURCES: Laws, 1974, ch. 366, § 11, eff from and after July 1, 1974.

Cross References — Mandamus generally, see §§ 11-41-1 et seq.

Application of judicial review provisions of this section to determination of commissioner that a person violated Managing General Agents Act, see § 83-18-111.

§ 83-6-43. Certain laws superseded; remedies to be construed as supplemental.

All laws and parts of laws of this state inconsistent with this chapter are hereby superseded with respect to matter covered by this chapter, but all remedies provided herein for protection of policyholders and the public shall be construed as cumulative and supplemental to any remedies now existing under the law.

SOURCES: Laws, 1974, ch. 366, § 12, eff from and after July 1, 1974.

CHAPTER 7

Life Insurance

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GENERAL PROVISIONS

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§ 83-7-1. Life insurance companies defined.

All corporations, associations, partnerships, or individuals doing business in this state under any charter, contract, agreement, or statute of this or any other state involving the payment of money or other things of value to families or representatives of policy and certificate holders or members, conditioned upon the continuance or cessation of human life, or involving an insurance, guaranty, contract, or pledge for the payment of endowments for annuities, or who shall employ agents to solicit such business, shall be deemed to be life insurance companies, shall in all respects be subject to the laws herein made and provided for the government of life insurance companies, and shall not make any such insurance, guaranty, contract, or pledge in this state with any citizen or resident thereof which does not distinctly state the amount of benefits payable, the manner of payment, and the consideration therefor. Any insurance company or agent who shall make, issue, or deliver a policy of life insurance in wilful violation of this section shall pay to the state for each offense Fifty Dollars ($50.00); but such policy shall, nevertheless, be binding upon the companies issuing the same.

SOURCES: Codes, 1892, § 2339; 1906, § 2598; Hemingway's 1917, § 5062; 1930, § 5170; 1942, § 5680.

Cross References — Definition of insurance, see § 83-5-5.

Registration and examination of companies writing ordinary life insurance, see §§ 83-6-1 et seq.

Maximum rates of interest on policy loans, see § 83-7-26.

Conditions of fire insurance contract, see § 83-13-11.

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JUDICIAL DECISIONS

1. In general.
2. Terms of contract to be plainly expressed.

1. In general.

War or military clause in life policy requiring written permit from insurer and payment of extra premium in order for policy to remain in force while insured is serving in the army or navy in time of actual war, constitutes an exemption of insurer from liability, and creation of liability under the exempted circumstances would require another contract which insurer is under no obligation to make and which it may decline to do so without reason. White v. Standard Life Ins. Co., 198 Miss. 325, 22 So. 2d 353 (1945).

War clause in life policy requiring written permit from insurer and payment of extra premium in order for policy to remain in force while insured is serving in the army or navy in time of actual war, is not void as violative of this section [Code 1942, § 5680] on ground that the amount of the extra premium to be charged in case such permission is granted is not set out in the policy. White v. Standard Life Ins. Co., 198 Miss. 325, 22 So. 2d 353 (1945).

Annuity policies, though not life insurance policies, are such as a life insurance company is authorized to issue and therefore are subject to the provisions of the statute regulating the business of life insurance companies, and not to the requirements of the blue sky law. Hamilton v. Penn Mut. Life Ins. Co., 196 Miss. 345, 17 So. 2d 278 (1944).

Policy including both death and health and accident benefits constituted "life insurance policy." Universal Life Ins. Co. v. State, 155 Miss. 358, 121 So. 849 (1929).

Fraternal benefit association is a life insurance company. Masonic Benefit Ass'n v. Dotson, 111 Miss. 60, 71 So. 266 (1916).

2. Terms of contract to be plainly expressed.

A survivorship bonus clause, by which it is pledged that a life insurance company will place annually into a fund a specified amount per each given unit of insurance and that on a given anniversary of the policy a proportionate amount of the total fund accumulated on all policies will be paid to the policyholder, does not conform to the requirement that a life insurance policy distinctly state the amount of benefits payable. White v. National Old Line Ins. Co., 203 Miss. 752, 34 So. 2d 234 (1948).

This section [Code 1942, § 5680] requires that the terms of contract of insurance shall be plainly expressed; and while it cannot be expected that all terms which might to denominated as technical shall be eliminated, nevertheless it can be expected and required that when through experience it has been learned that any particular joinder of words or phrases has caused repeated misunderstanding and litigation, these words or phrases shall be discontinued and those of a plainer meaning inserted in lieu thereof. New York Life Ins. Co. v. Nessossis, 189 Miss. 414, 196 So. 766 (1940).

The court refusing to be bound by testimony that the term "has value" and "guaranteed cash surrender value" were understood in the insurance business to mean the same thing and holding that a provision for a surrender charge and the figures contained in the table under the caption of "Guaranteed cash surrender values," did not constitute a fixation of definite and final figures but only a stipulation of minimum amounts. New York Life Ins. Co. v. Nessossis, 189 Miss. 414, 196 So. 766 (1940).

A surrender charge of "not more than 1 and ½ percentum of the face amount of this policy," to be deduced in computing the cash value for paid up nonparticipating term insurance in the event of default in payment of premium and failure to select other options provided in a life insurance policy, was not void under this section [Code 1942, § 5680] where the policy contained a table setting forth the precise cash value of the policy for each year after deduction of the surrender charge, and thereby definitely fixed both the amount of surrender charge and the policy's cash value. Mutual Life Ins. Co. v. Nelson, 184 Miss. 632, 184 So. 636 (1938), suggestion of error overruled, 184 Miss. 646, 186 So. 837 (1939); New York Life Ins. Co. v. Boling, 177 Miss. 172, 169 So. 882, 111 A.L.R. 967 (1936).

RESEARCH REFERENCES

Practice References. Business Insurance Law and Practice Guide, (Matthew Bender).

Business Law Monographs, Volume IN1 — Business Uses of Life Insurance (Matthew Bender).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

ALR. Rights and remedies arising out of delay in passing upon application for insurance. 32 A.L.R.2d 487.

Gift of life insurance policy. 33 A.L.R.2d 273.

Death or injury resulting from insured's voluntary act in taking overdose of medicine, drugs or the like, as caused by accident or accidental means. 52 A.L.R.2d 1083.

Validity and construction of statutes relating to style or prominence with which provisions must be printed in insurance policy. 36 A.L.R.3d 464.

Suicide clause of life or accident insurance as affected by incontestable clause. 37 A.L.R.3d 337.

Conclusiveness of recitation, in delivered insurance policy, that initial premium has been paid. 44 A.L.R.3d 1361.

Liability of insurance agent or broker to insured for misrepresentation of cash surrender value or accumulated value benefits of life insurance policy. 44 A.L.R.4th 1030.

Accident or life insurance: death by autoerotic asphyxiation as accidental. 62 A.L.R.4th 823.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 5-7.

CJS. 44 C.J.S., Insurance §§ 28-31.

§ 83-7-3. Distinction in same class and rebates prohibited.

No life insurance company doing business in Mississippi shall make any distinction or discrimination in favor of individuals of the same class and equal expectation of life in the amount of payments of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any of the terms and conditions of the contract it makes. Nor shall any such company or any agent thereof make any contract of insurance or agreement as to such contracts other than are plainly expressed in the application and policy issued thereon; nor shall any such company or agent pay or allow as inducements to insurance any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever not specified in the policy contract of insurance. Whenever it shall appear to the satisfaction of the commissioner, after a hearing before him upon notice, that any company, officer, agent, subagent, broker, or solicitor has violated any provision of this section, he shall revoke the license of any such company or person to transact business in this state; and no other license shall be issued to any such company or person within one (1) year after such revocation. However, nothing in this section shall prevent a company which transacts industrial life insurance on a weekly payment plan from returning to policyholders who have made a premium payment for a period of at least one (1) year the percentage of premium which the company would otherwise have paid for the weekly collection of such premium; nor shall this section be construed to prevent the taking of a bona fide obligation, with legal interest, in payment of any premium.

SOURCES: Codes, 1906, § 2600; Hemingway's 1917, § 5064; 1930, § 5171; 1942, § 5681.

JUDICIAL DECISIONS

1. In general.
2. Discriminatory policy provisions.
3. Discrimination by company or agent.

1. In general.

If there is any doubt as to whether the provision of an industrial limited accident insurance policy means that the bodily injuries must be effected solely by external violent and accidental means, instead of meaning that the death must be effected solely by such means, then the doubt would have to be resolved in favor of the insured since this section [Code 1942, § 5681] renders unenforceable in favor of the insurer any contract of insurance or agreement as to such contracts other than are plainly expressed in the application and policy issued thereon. Standard Life Ins. Co. v. Foster, 210 Miss. 242, 49 So. 2d 391 (1950).

A survivorship bonus clause in a life insurance policy, by which the company is affirmatively bound to pay into a special fund for distribution a fixed amount annually per policy unit, is vitally different from a dividend-sharing provision. White v. National Old Line Ins. Co., 203 Miss. 752, 34 So. 2d 234 (1948).

War or military clause in life policy requiring written permit from insurer and payment of extra premium in order for policy to remain in force while insured is serving in the army or navy in time of actual war, constitutes an exemption of insurer from liability, and creation of liability under the exempted circumstances would require another contract which insurer is under no obligation to make and which it may decline to do without reason. White v. National Old Line Ins. Co., 203 Miss. 752, 34 So. 2d 234 (1948).

War clause in life policy requiring permit from insurer and payment of extra premium in order for policy to remain in force while insured is serving in the army or navy in time of actual war, is not void as violative of this section [Code 1942, § 5681] on ground that the amount of the extra premium to be charged in case such permission is granted is not set out in the policy. White v. Standard Life Ins. Co., 198 Miss. 325, 22 So. 2d 353 (1945).

2. Discriminatory policy provisions.

Life policy provision defining cash surrender value to be the reserve on the face of the policy, less any indebtedness thereon, and less a surrender charge of not more than one and one-half per cent of the face of the policy, as applied to the determination of term insurance upon default of the insured in the payment of premiums and election of other options of the policy, held not to violate a similar statutory provision under Arkansas law. Golightly v. New York Life Ins. Co., 186 Miss. 598, 191 So. 111 (1939).

In determining term insurance under life policy which provided for automatic paidup term insurance upon failure of insured to exercise other options of the policy to the extent that the cash value would purchase such insurance if applied as a net single premium and defined cash value as the reserve for the face amount of the policy and dividend additions less the surrender charge, company was authorized to deduct surrender charge in computing such cash value which was definitely determined by a table, and the provisions of the policy in this respect did not violate this section [Code 1942, § 5681]. Mutual Life Ins. Co. v. Nelson, 184 Miss. 632, 184 So. 636 (1938), suggestion of error overruled, 184 Miss. 646, 186 So. 837 (1939).

Where insured had right to borrow on twenty-year payment life policy, provision denying option to convert policy to paidup policy solely because loan was outstanding held void under statute for discrimination between insurants. McCain v. Lamar Life Ins. Co., 178 Miss. 459, 172 So. 495 (1937).

Where insured had never surrendered policy, and there was no physical, actual surrender of policy, provision for surrender charge of not more than 1 ½ per cent of face of life policy was not enforceable so as to reduce cash surrender value to amount insufficient to keep policy in force to time of insured's death, since surrender charge was not fixed and definite, and hence permitted insurer to discriminate between policyholders of same class as forbidden by statute. New York Life Ins. Co. v. Boling, 177 Miss. 172, 169 So. 882, 111 A.L.R. 967 (1936), appeal dismissed, 300 U.S. 637, 57 S. Ct. 506, 81 L. Ed. 854 (1936), reh'g denied, 300 U.S. 688, 57 S. Ct. 667, 81 L. Ed. 889 (1937).

Clause of life policy under which borrowers, on lapse of policy, were entitled only to amount of extended insurance which available net cash value would purchase, held not unenforceable as creating discrimination against borrowing policyholders. Neal v. Columbian Mut. Life Assurance Soc., 161 Miss. 814, 138 So. 353 (1931).

Insurance policy providing that policyholder would be paid 1% of cash premiums received by company, annually, in consideration of policyholder giving information as to insurance agents and risks, held illegal discrimination. Cole v. State, 91 Miss. 628, 45 So. 11 (1907).

3. Discrimination by company or agent.

Return of insured's note for payment of annual premiums, pursuant to his request for cancelation thereof, and application of policy values to extended insurance from due date of premium for which note was given, did not constitute an illegal rebate of premiums on the theory that life insurer, having accepted insured's note, designed to retain policy in force for another year, was without power to cancel such premiums and thereby fix the original due date as the controlling date for computation of extended insurance and that its attempt to do so constituted an illegal rebate of premiums. Penn Mut. Life Ins. Co. v. Weathersby, 194 Miss. 741, 13 So. 2d 628 (1943).

Member of benefit insurance association held not entitled to recover, as part of agreed disability benefits of "one-half of the face of the certificate," one-half of amount provided elsewhere in certificate "for the erection of a monument to his memory," irrespective of whether in some cases association had included monument benefits in computing disability benefits, since such discrimination would be violative of statute. Sovereign Camp, Woodmen of the World v. Waggoner, 178 Miss. 418, 173 So. 424 (1937).

Under statute prohibiting discrimination by life insurance companies in favor of individuals and subjecting company to revocation of license for such discrimination, promise of such discrimination is unenforceable. Sovereign Camp, Woodmen of the World v. Waggoner, 178 Miss. 418, 173 So. 424 (1937).

Agent's agreement to return all of premium except company's share held illegal, and agent's administrator could recover the balance of such premium. Rideout v. Mars, 99 Miss. 199, 54 So. 801, Am. Ann. Cas. 1913D,770 (1911).

RESEARCH REFERENCES

ALR. State regulation of insurer's right to classify insureds for premium or other underwriting purposes by occupation. 57 A.L.R.4th 625.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 537, 538.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance Form 11.1 (petition or application by insurance company against state commissioner of insurance to enjoin further proceedings to suspend or revoke insurance company's certificate of authority).

CJS. 44 C.J.S., Insurance § 551.

§ 83-7-5. Proceeds of policy not subject to judicial process or assignment while in hands of company.

If, under the terms of any annuity contract, or policy of life insurance, or under any written agreement supplemental thereto issued by any life insurance company, the proceeds are retained by such company at maturity or otherwise, no person entitled to any part of such proceeds, or any installments of interest due or to become due thereon, shall be permitted to commute, anticipate, encumber, alienate, or assign the same, or any part thereof, if such permission is expressly withheld by the terms of such contract, policy, or supplemental agreement. If such contract, policy, or supplemental agreement so provides, no payment of interest or of principal shall be in any way subject to such person's debts, contracts, or engagements, nor to any judicial processes to levy upon or attach the same for payment thereof. No such company shall be required to segregate such funds, but may hold them as a part of its general corporate funds.

SOURCES: Codes, 1930, § 5172; 1942, § 5682; Laws, 1924, ch. 190.

Cross References — Payment of proceeds of life insurance policy, see §§ 85-3-11 et seq.

JUDICIAL DECISIONS

1. In general.

Legislative purpose was to permit insured to provide for wife and dependents in such manner as to prevent proceeds of policies from being applied to their debts, and to prevent anticipation of installments. Adams v. Strong, 171 Miss. 510, 158 So. 204 (1934).

Insurer's monthly payments to beneficiary under life policy held not subject to garnishment where there was no showing of agreement by insurer giving beneficiary right to anticipate benefits, and no such indorsement was ever made on policy as required thereby. Adams v. Strong, 171 Miss. 510, 158 So. 204 (1934).

RESEARCH REFERENCES

ALR. Rights and remedies arising out of delay in passing upon application for insurance. 32 A.L.R.2d 487.

Rights of creditors of life insured as to options or other benefits available to him during his lifetime. 37 A.L.R.2d 268.

Am Jur. 31 Am. Jur. 2d, Exemptions §§ 80 et seq.

CJS. 35 C.J.S., Exemptions §§ 32 et seq.

§ 83-7-6. Proceeds of policy become due as of date of death of insured; insurers admitted to transact life insurance in Mississippi required to pay interest on proceeds of certain policies; computation of interest; applicability.

(1) Proceeds of a life insurance policy shall become due as of the date of the death of the insured. Each insurer admitted to transact life insurance in this state shall pay interest on proceeds or payments under any policy of life insurance payable to a beneficiary residing in this state or to a beneficiary under a policy issued in this state or to a beneficiary under a policy insuring a person resident in this state at the time of death.

(2) Interest payable under subsection (1) of this section shall be computed from the insured's death until the date of payment and shall be computed at the rate of interest guaranteed by the policy or at the current rate of interest applicable to death proceeds left on deposit with the insurer under an interest settlement option or at the current rate of interest payable on dividends left on deposit with the insurer, whichever is greater.

(3) This section shall be applicable to any such policy where proceeds have not been paid and accepted before May 14, 2004.

(4) This section shall not apply:

(a) When the total death proceeds payable by an insurer on account of the death of an insured person is less than Five Thousand Dollars ($5,000.00); or

(b) When death proceeds result from insurance written under Section 83-53-1 et seq.

SOURCES: Laws, 2004, ch. 564, § 1, eff from and after passage (approved May 14, 2004.)

§ 83-7-7. Policy beneficiary designations of trustees.

(1) Life insurance may be made payable to a trustee to be named as beneficiary in the policy and the proceeds of such insurance shall be paid to such trustee and shall be held and disposed of by the trustee as provided in a trust agreement made by the insured during his lifetime. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee to receive such insurance proceeds as beneficiary.

(2) A policy of life insurance may designate as beneficiary a trustee or trustees named by will. The proceeds of such insurance shall be payable to the trustee or trustees to be held and disposed of under the terms of the will as they exist as of the time of the death of the testator. If no such trustee makes claim to the proceeds from the insurance company within eighteen (18) months after the death of the insured, or if satisfactory evidence is furnished to the insurance company within such eighteen-month period showing that there is or will be no trustee to receive the proceeds, payment shall be made by the insurance company to the executors, administrators, or assigns of the insured, unless otherwise provided by agreement with the insurance company during the lifetime of the insured.

(3) The proceeds of the insurance as received by the trustee or trustees shall not be subject to debts of the insured nor to transfer or estate tax to any greater extent than if such proceeds were payable to the beneficiary or beneficiaries named in the trust and not to the estate of the insured.

(4) Such insurance proceeds so held in trust may be commingled with any other assets which may properly come into such trust.

(5) Nothing in this section shall affect the validity of any life insurance policy beneficiary designation heretofore made naming trustees of trusts established by living trust or by will.

SOURCES: Codes, 1942, § 5682.5; Laws, 1966, ch. 526, §§ 1-4, eff from and after passage (approved May 6, 1966).

Cross References — Payment of proceeds of life insurance policies, see §§ 85-3-11 et seq.

JUDICIAL DECISIONS

1. In general.

Where an insured evidences an intent to change the beneficiary, and does all he or she can do to comply with the requirements of the policy, substantial compliance will be found and the change of beneficiary will be upheld. Thus, there was substantial compliance with policy terms requiring that a request for a change of beneficiary be on a written form where the insured made an oral request for a change of beneficiary of a group life insurance policy that she acquired through her employment but her employer's agent did not have a change of beneficiary form for the life insurance policy, and the insured changed the beneficiary on a separate accident insurance policy. Bell v. Parker, 563 So. 2d 594 (Miss. 1990).

RESEARCH REFERENCES

ALR. Who is "parent" entitled to proceeds of serviceman's group life insurance, where there are no named beneficiaries, and no surviving widow or children, under 38 USCS § 770(a). 73 A.L.R. Fed. 135.

Am Jur. 31 Am. Jur. 2d, Exemptions §§ 80 et seq.

CJS. 35 C.J.S., Exemptions §§ 32 et seq.

§ 83-7-9. Assignment of group life insurance policy.

Subject to the terms of the policy or pursuant to an agreement between the insured, the group policyholder, and the insurer, any person insured under a group life insurance policy may make to any other person, other than the policyholder, an assignment of all or any part of the incidents of ownership conferred on him by the policy or by law, including specifically, but not by way of limitation, the right to exercise the conversion privilege and the right to name a beneficiary.

SOURCES: Codes, 1942, § 5682.9; Laws, 1971, ch. 393, § 1, eff from and after passage (approved March 22, 1971).

RESEARCH REFERENCES

ALR. Change of beneficiary in group life insurance policy as affected by failure to comply with policy requirements as to manner of making change. 78 A.L.R.3d 466.

Who is "parent" entitled to proceeds of serviceman's group life insurance, where there are no named beneficiaries, and no surviving widow or children, under 38 USCS § 770(a). 73 A.L.R. Fed. 135.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 649 et seq.

CJS. 45 C.J.S., Insurance §§ 616 et seq.

§ 83-7-11. Penalty for false statement as to publication.

Any solicitor, agent, examining physician, or other person who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any publication for insurance, or who shall make any such statement for the purpose of obtaining fee, commission, money, or benefit in any corporation transacting business under this chapter, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or imprisonment in the county jail for not less than thirty (30) days.

SOURCES: Codes, 1906, § 2604; Hemingway's 1917, § 5067; 1930, § 5173; 1942, § 5683.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Failure to disclose terminal illness as basis for life insurer's avoidance of high-risk, high-premium policy requiring no health warranties or proof of insurability. 42 A.L.R.4th 158.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 74, 78.

23 Am. Jur. Proof of Facts 2d 53, Innocent Misrepresentation of Physical Condition by Applicant for Life or Health Insurance.

CJS. 44 C.J.S., Insurance § 139.

§ 83-7-13. Application of insured to be filed with policy of insurance.

All life insurance companies doing business in the State of Mississippi shall deliver to the insured with the policy, certificate, or contract of insurance in any form a copy of the insured's application; and in default thereof, said life insurance company shall not be permitted in any court of this state to deny that any of the statements in said application are true.

SOURCES: Codes, 1906, § 2675; Hemingway's 1917, § 5141; 1930, § 5174; 1942, § 5684.

JUDICIAL DECISIONS

1. In general.
2. Copy of application attached to policy.
3. Delivery of application to insured.

1. In general.

This section [Code 1942, § 5684] was not intended to permit a person to perpetrate a fraud. Moody v. New York Life Ins. Co., 161 F. Supp. 482 (S.D. Miss. 1958), aff'd, 262 F.2d 588 (5th Cir. 1959).

The purpose of this section [Code 1942, § 5684] is to enable the insured to determine at any time by inspection of his policy whether there are any errors contained therein, through inadvertence or otherwise, and to correct them or to disclose the true facts to the insurance company while he is carrying the insurance and before he becomes uninsurable. Moody v. New York Life Ins. Co., 161 F. Supp. 482 (S.D. Miss. 1958), aff'd, 262 F.2d 588 (5th Cir. 1959).

Issue of good health at time of original life policy, which lapsed and was revived upon representation that insured was then in good health, was open without regard to the warranties under the original application. Standard Life Ins. Co. v. Baldwin, 199 Miss. 302, 24 So. 2d 360 (1946).

Statute precluding insurer from denying truth of statements contained in application for policy, unless copy of application is delivered to insured with policy, must be liberally construed for insured's benefit. Aetna Life Ins. Co. v. McCree, 174 Miss. 242, 164 So. 223 (1935).

Having been held by the Supreme Court of Mississippi to be a rule of substantive law and not a rule of evidence, this statute applies to actions removed from a state to a federal court within the state. Great S. Life Ins. Co. v. Burwell, 12 F.2d 244 (5th Cir. 1926), cert. denied, 271 U.S. 683, 46 S. Ct. 633, 70 L. Ed. 1150 (1926).

This section [Code 1942, § 5684] does not apply to mutual benefit societies. Columbian Mut. Life Assurance Soc. v. Harrington, 139 Miss. 826, 104 So. 297 (1925).

The burden of proving defendant an insurer to whom this provision applies is on plaintiff. Columbian Mut. Life Assurance Soc. v. Harrington, 139 Miss. 826, 104 So. 297 (1925).

This section [Code 1942, § 5684] repealed as to fraternal benefit societies in regard to preventing insurer from contradicting statements in application, unless copy thereof was furnished insured.

Knights of MacCabees of the World v. Coleman, 128 Miss. 854, 91 So. 561 (1922).

This section [Code 1942, § 5684] held to create a rule of substantive law which becomes a part of contract. Sovereign Camp, Woodmen of the World v. Farmer, 116 Miss. 626, 77 So. 655 (1918).

2. Copy of application attached to policy.

Where the application for the original life insurance policy contained false statements by the insured but before the policy was delivered, insurer, at insured's request, issued two policies in the same amount as the original and required the insured to execute a form stating that since making the application for the original policy the insured had not consulted or been treated by any physician, and the policies of new insurance with copy of application attached thereto were delivered to the insured, and the policy provided that the policy and application formed the entire contract, insurer was not precluded from taking advantage of the insured's false statements, even though the form executed prior to the issuance of the new policies was not attached thereto. Moody v. New York Life Ins. Co., 161 F. Supp. 482 (S.D. Miss. 1958), aff'd, 262 F.2d 588 (5th Cir. 1959).

In action on hospitalization policy, failure to attach insured's application to policy as provided in this section [Code 1942, § 5684] does not bar defense that insured's sickness for which hospitalization is claimed was not contracted while policy was in force, that she was not in good health when she received the policy, and that her case was not embraced within provisions for indemnity under policy. American Life Ins. Co. v. Walker, 208 Miss. 1, 43 So. 2d 657 (1949).

Representatives in application for revival of lapsed life policy are competent although not attached to the new policy as required of original policies by this section [Code 1942, § 5684]. Standard Life Ins. Co. v. Baldwin, 199 Miss. 302, 24 So. 2d 360 (1946).

Where part of amended application was not attached to life policy, insurer could not prove statement therein as to consulting physician was false. New York Life Ins. Co. v. Rosso, 154 Miss. 196, 122 So. 382 (1929).

3. Delivery of application to insured.

Failure of an insurer to deliver a copy of the application with a life insurance policy did not estop the insurer from relying on express provisions of the policy that it should be liable only for the amount of the premiums paid if the insured was in sound health at the time the policy was delivered, and from showing that at the time the insured was recovering from tuberculosis, despite the fact that the application represented the insured as in sound health and as never having had tuberculosis. National Life & Accident Ins. Co. v. Green, 191 Miss. 581, 2 So. 2d 838, 136 A.L.R. 1510 (1941), error overruled, 191 Miss. 595, 3 So. 2d 812, 136 A.L.R. 1510 (1941).

Insurer's failure to send to insured copy of application for reinstatement of lapsed life policy held not to preclude insurer from denying truth of statements in application for reinstatement because of statute requiring life insurance companies to deliver to insured, with policy, copy of insured's application, and in default thereof prohibiting such companies from denying truth of statements in application, since statute has reference to application upon which original policy is issued and not to any reinstatement subsequent to original delivery. Walker v. Acacia Mut. Life Ins. Co., 178 Miss. 395, 173 So. 453 (1937).

Where employee's application for insurance was not delivered to him with insurance certificate, but was attached to master policy delivered to employer, insurer's evidence offered to contradict statements in application held property excluded. Aetna Life Ins. Co. v. McCree, 174 Miss. 242, 164 So. 223 (1935).

Where agent of insurer required to make written application and undergo physical examination to obtain employment took out disability insurance with insurer on basis of application, application was in legal effect "application for insurance," and hence failure of insurer to deliver copy of application to agent with policy precluded insurer from showing in suit on policy that agent's disability was caused by disease contracted before policy was issued. National Life & Accident Ins. Co. v. Prather, 169 Miss. 898, 153 So. 881 (1934).

Insurer's failure to deliver copy of application with life policy held not to preclude reliance on express conditions appearing in policy itself. Metropolitan Life Ins. Co. v. Scott, 160 Miss. 537, 134 So. 159 (1931).

RESEARCH REFERENCES

ALR. Rights and remedies arising out of delay in passing upon application for insurance. 32 A.L.R.2d 487.

Insurance: sufficiency of insurer's compliance with statutory requisites as to attaching copy of application to, or making it part of, policy. 18 A.L.R.3d 760.

Insurer's duty, and effect of its failure, to provide insured or payee with copy of policy or other adequate documentation of its terms. 78 A.L.R.4th 9.

Am Jur. 43 Am. Jur. 2d, Insurance § 314.

CJS. 44 C.J.S., Insurance § 428-431.

§ 83-7-15. Misstatement of age not to invalidate policy.

Any misstatement of age in any policy, certificate, or contract of life insurance in any form shall not invalidate said policy, certificate, or contract of life insurance; but in such a case when a loss occurs, the beneficiaries shall recover on said policy, certificate, or contract of insurance such an amount of insurance as the premiums paid would have purchased for the insured at his actual age, reckoning according to the rate tables of said insurance company.

SOURCES: Codes, 1906, § 2676; Hemingway's 1917, § 5142; 1930, § 5175; 1942, § 5685.

JUDICIAL DECISIONS

1. In general.

A policy provision that if age is not truthfully stated, benefits shall be those which premiums paid would have purchased at the true age does not conflict with this section [Code 1942, § 5685]. Tisdale v. Jefferson Std. Life Ins. Co., 244 Miss. 839, 147 So. 2d 122 (1962).

In an action to recover insurance premiums paid on life insurance policy after insurer had not notified insured that face value of policy would be reduced to an amount that premium would have purchased at the correct age of insured, in accordance with policy provisions and the statutory provision that a misstatement of age shall not invalidate the policy, evidence as to insurer's fraud in securing contract for insurance held insufficient for submission to jury. Metropolitan Life Ins. Co. v. Hall, 152 Miss. 413, 118 So. 826 (1928).

Misstatement of age does not invalidate policy but merely limits recovery to amount which premiums paid would have purchased at insured's actual age. Coplin v. Woodmen of World, 105 Miss. 115, 62 So. 7, Am. Ann. Cas. 1916D,1295 (1913).

RESEARCH REFERENCES

ALR. Calculation of newborn child's age for purposes of life insurance policy requiring that specified age be reached before coverage begins. 37 A.L.R.3d 1448.

Am Jur. 44 Am. Jur. 2d, Insurance §§ 765 et seq.

23 Am. Jur. Proof of Facts 2d 53, Innocent Misrepresentation of Physical Condi-

tion by Applicant for Life or Health Insurance.

CJS. 44 C.J.S., Insurance §§ 381, 382.

§ 83-7-17. Policies to show plainly on face kind and character; fees for commissioner's approval; expedited form and rate review procedure.

(1) All life insurance companies other than fraternal beneficiary associations, authorized to do the business of life insurance in this state, are hereby required to print or stamp in conspicuous type on the face or first page of each and every policy sold to citizens of this state words indicating correctly and fully the kind and character of the policy. The same words shall also be printed or stamped on the back or title page of every such policy so that they may be easily seen and read when the policy is folded. Every such life insurance company shall submit to the commissioner for his approval the words required in this section to be printed on each policy, together with a sample copy of every kind or class of policies offered for sale in this state; and every life insurance company shall print on each of its policies sold to citizens of this state such words as the Insurance Commissioner shall approve. The license of any insurance company doing business in this state may be revoked by the commissioner for violating any of the provisions of this section. A policy of life insurance shall not be issued or delivered in this state until the form has been approved and filed by the Insurance Commissioner.

(2) The commissioner shall collect and pay into the Insurance Department Fund in the State Treasury the following fees for services provided under this section:

FORM	FEE
Each individual policy contract, including revisions	$15.00
Each group master policy or contract, including revisions	15.00
Each rider, endorsement or amendment, etc	10.00
Each insurance application where written application is required and is to be made a part of the policy or contract	10.00
Each questionnaire	7.00
Charge for resubmission where payment is not included with original submission	5.00

Additional charge for tentative approval same as above.

(3) In order to expedite and become more efficient in reviewing and approving life, credit life and annuity form and rate filings, the commissioner may establish an expedited form and rate review procedure whereby insurers may elect to pay reasonable actuarial fees directly to a department-approved actuarial service in exchange for an expedited review of form and rate filings by the actuarial service. The commissioner may make such reasonable rules and regulations concerning the expedited procedure, and may set reasonable fees for the actuarial services provided. This provision shall not abridge any other authority granted to the commissioner by law, including the authority to collect the filing fees prescribed by this section.

SOURCES: Codes, 1906, § 2677; Hemingway's 1917, § 5143; 1930, § 5176; 1942, § 5686; Laws, 1950, ch. 416; Laws, 1988, ch. 526, § 3; Laws, 1997, ch. 324, § 2; Laws, 1998, ch. 323, § 2; Laws, 2008, ch. 432, § 1, eff from and after July 1, 2008.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the third sentence of (1). The word "a" was inserted preceding "sample," and the word "a" was deleted following "sample" in the third sentence so that "with sample a copy" now reads "with a sample copy." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor's Note — Laws of 1988, ch. 526, § 13, provides as follows:

"SECTION 13. The commissioner may, after notice and hearing, issue rules and regulations that he deems necessary to effectuate the purposes of this act or to eliminate devices or plans designed to avoid or render ineffective the provisions of this act. The commissioner may require such information as is reasonably necessary for the enforcement of this act. All rules and regulations adopted and promulgated pursuant to this act shall be subject to the provisions of the Mississippi Administrative Procedures Law as provided in Section 25-43-1 et seq. [now Section 25-43-1.101 et seq.], Mississippi Code of 1972."

Cross References — Policies issued on co-operative plan, see § 83-25-3.

Conditions for fraternal society to insure children, see § 83-29-73.

JUDICIAL DECISIONS

1. In general.

The power of the insurance commissioner to approve or disapprove life insurance policy provisions is a quasi-judicial power in which he is allowed much latitude, so long as the power is not arbitrarily exercised. White v. National Old Line Ins. Co., 203 Miss. 752, 34 So. 2d 234 (1948).

The insurance commissioner is not estopped by previous approval of the provisions in a life insurance policy from subsequently disapproving such provisions on advice of the attorney general that such provisions do not comply with the law. White v. National Old Line Ins. Co., 203 Miss. 752, 34 So. 2d 234 (1948).

Annuity policies were not void and subject to cancelation at the suit of assured because they were issued and delivered in this state without compliance with this section [Code 1942, § 5686], since they were not policies of life insurance. Hamilton v. Penn Mut. Life Ins. Co., 196 Miss. 345, 17 So. 2d 278 (1944).

Insurance policies providing for monthly income to assured for life were not life insurance policies, within the purview of statute providing that a policy of life insurance shall not be issued or delivered in this state until the form has been approved and filed by the insurance commissioner, but were annuity policies notwithstanding that they also provided for payment to another of the balance, if any, of the single premium remaining at the death of assured. Hamilton v. Penn Mut. Life Ins. Co., 196 Miss. 345, 17 So. 2d 278 (1944).

RESEARCH REFERENCES

ALR. Incontestability clause as precluding insurer from defending on ground of particular clause in life policy limiting or precluding insurer's liability because of other life insurance. 22 A.L.R.2d 809.

Death or injury resulting from insured's voluntary act in taking overdose of medicine, drugs, or the like, as caused by accident or accidental means. 52 A.L.R.2d 1083.

Validity and construction of statutes relating to style or prominence with which provisions must be printed in insurance policy. 36 A.L.R.3d 464.

Insurer's duty, and effect of its failure, to provide insured or payee with copy of policy or other adequate documentation of its terms. 78 A.L.R.4th 9.

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance Form 11.1 (petition or application by insurance company against state commissioner of insurance to enjoin further proceedings to suspend or revoke insurance company's certificate of authority).

CJS. 44 C.J.S., Insurance § 392.

§ 83-7-19. Minors may make insurance contract.

Any minor of the age of fifteen (15) years nearest birthday or more may, notwithstanding such minority, contract for life, health, and accident insurance on his own life for the benefit of his father, mother, husband, wife, child, brother, sister, or any person having an insurable interest in the life of such minor and may, with the approval of the chancery court, contract for life insurance for his benefit on the life of any person owning an estate of any kind in which the minor is to participate or to receive benefits upon the death of such person, either by inheritance or by will. Such minor may exercise all such contractual rights with respect to any such contract of insurance as might be exercised by a person of full legal age and may at any time surrender his or her interest in any such insurance or give a valid discharge for any benefit accruing or money due thereunder.

The guardian of any minor under the age of fifteen (15) years may, with the approval of the chancery court, contract for life insurance for the benefit of his ward on the life of any person under the conditions hereinabove set forth.

SOURCES: Codes, 1930, § 5177; 1942, § 5687; Laws, 1950, ch. 416.

RESEARCH REFERENCES

CJS. 44 C.J.S., Insurance §§ 381, 382.

§ 83-7-21. Reserve liabilities.

The reserve liabilities for all policies in force in any domestic company being ascertained in the manner provided in Section 83-7-23, the Insurance Commissioner shall notify it of the amount. The officers of such company shall deposit with the State Treasurer for the security and benefit of all the policyholders the sum of One Hundred Thousand Dollars ($100,000.00). Provided, this sum may be increased to the amount necessary for a domestic company to be qualified to do business in another state, so long as such state will accept a certificate verified by the State Treasurer of Mississippi showing that such company has on deposit in Mississippi the required sum.

So long as the company continues solvent and complies with the laws of the state, it may collect the income on such securities. The company may substitute therefor other securities recognized by law as lawful investments of the company; provided, however, it shall be the duty of the State Treasurer to accept from such insurance companies securities tendered to him for deposit upon the representation of such companies by their officers or agents that such securities comply with the laws of the State of Mississippi, as provided in this chapter. Once a year the Insurance Commissioner shall examine all of the securities so deposited and all of the securities held as reserves by each company and either approve or disapprove such securities. Should he disapprove any such securities, then such securities shall be replaced by such companies with other securities approved by the Insurance Commissioner, sufficient in amount to comply with the requirement of deposit with the State Treasurer and sufficient in amount under the law. Any fraud on the part of any officer or agent of a company in making any substitution of securities shall be a violation of law and subject any such person to the penalties provided in this chapter.

It is also provided that all bonds or other evidences of debt having a fixed term and rate held by any life insurance company authorized to do business in this state may, if amply secured and not in default as to principal and interest, be valued as follows: if purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made; provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase; and, provided further that the Insurance Commissioner shall have full discretion in determining the method of calculating values according to the foregoing rule.

When in the opinion of the State Treasurer there is insufficient space in vaults and safes in the Treasury Department in which to keep the securities as provided in this chapter, then the State Treasurer is authorized, empowered, and directed to:

(a) Deposit for safekeeping in the vaults of any of the state or national banks located within this state which are members of the Federal Deposit Insurance Corporation and which have appropriate safekeeping facilities which have been approved by the State Depository Commission, any Federal Reserve bank, any Federal Reserve branch bank, or any bank which is a member of the Federal Reserve system and is located in a city where there is a Federal Reserve branch bank, the securities placed with him by insurance companies; or

(b) Accept, in lieu of the securities themselves, safekeeping trust receipts issued to the State Treasurer by the authorized safekeeping banks located within this state which are members of the Federal Deposit Insurance Corporation and which have appropriate safekeeping facilities which have been approved by the State Depository Commission, such safekeeping trust receipts to describe the securities and show that such securities are held for safekeeping for the account of the State Treasurer. The securities so deposited shall not be commingled in any manner with the assets of the safekeeping bank.

The State Treasurer shall be responsible to such insurance companies for any loss of securities deposited with and actually held by the State Treasurer under the provisions of this chapter.

Notwithstanding any other provision of law, the securities qualified for deposit under this section may be deposited with a clearing corporation or held in the Federal Reserve book-entry system. Securities deposited with a clearing corporation or held in the Federal Reserve book-entry system and used to meet the deposit requirements set forth in this section shall be under the control of the Insurance Commissioner and shall not be withdrawn by the insurance company without the approval of the Insurance Commissioner. Any insurance company holding securities in such manner shall provide to the Insurance Commissioner evidence issued by its custodian or member bank through which such insurance company has deposited such securities in a clearing corporation or through which such securities are held in the Federal Reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank, and that the records of the custodian, other participant or member bank reflect that such securities are held subject to the order of the Insurance Commissioner.

SOURCES: Codes, 1942, § 5669-01; Laws, 1948, ch. 345, § 1; Laws, 1970, ch. 449, § 1; Laws, 1984, ch. 340; Laws, 1985, ch. 418; Laws, 2001, ch. 412, § 4, eff from and after July 1, 2001.

Editor's Note — Section 27-105-1 provides that wherever the term "State Depository Commission" appears in any law, the same shall mean the State Treasurer.

Cross References — Duty of state treasurer with respect to securities deposited with him, see § 7-9-9.

Eligibility of securities insured by Federal Housing Administrator, see § 43-33-305.

Legal reserves required of insurance companies, see § 83-5-23.

Computation of liabilities and reserves of insurance companies other than life, see § 83-13-3.

Reserves required of mutual companies, see § 83-31-31.

Securities required of burial associations, see § 83-37-11.

Utilization of modern systems such as clearing corporations and the Federal Reserve book-entry system for the deposit of securities without physical delivery, see §§ 83-67-1 et seq.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 71, 72.

CJS. 44 C.J.S., Insurance §§ 121-123.

§ 83-7-23. Standard valuation law.

(1) **Title:** — This section shall be known as the Standard Valuation Law.

(2) **Reserve valuation:** — The insurance commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, except that, in the case of an alien company, such valuation shall be limited to its United States business and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods

(net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any other state or other jurisdiction when such other valuation complies with the minimum standard herein provided, and if the official of such other state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the Mississippi Insurance Commissioner when the certificate of the Mississippi Commissioner states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by law of that other state or jurisdiction.

(3) **Computation of minimum standard:** — Except as otherwise provided in subsections (3-a) and (3-b) of this section the minimum standard for the valuation of all such policies and contracts issued before the operative date of Section 83-7-25 shall be that provided by the laws in effect immediately before such date.

Except as otherwise provided in subsections (3-a) and (3-b) of this section, the minimum standard for the valuation of all such policies and contracts issued on or after the operative date of Section 83-7-25 (the standard nonforfeiture law) shall be the commissioners reserve valuation methods defined in subsections (4), (4-a) and (7) of this section, three and one-half percent (3-½%) interest, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after September 1, 1975, four percent (4%) interest for such policies issued prior to January 1, 1980, five and one-half percent (5-½%) interest for single premium life insurance policies and four and one-half percent (4-½%) interest for all other such policies issued on and after January 1, 1980, and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, — the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued before the operative date of subsection (5-a) of Section 83-7-25 of the Standard Nonforfeiture Law for Life Insurance as amended; the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after the operative date of subsection (5-a) of the Standard Nonforfeiture Law for Life Insurance as amended (Section 83-7-25(5-a)) and before the operative date of subsection (5-c) of the Standard Nonforfeiture Law for Life Insurance as amended (Section 83-7-25(5-c)), provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than six (6) years younger than the actual age of the insured; and for such policies issued on or after the operative date of subsection (5-c) of the Standard Nonforfeiture Law for Life Insurance as amended (Section 83-7-25(5-c)):

(i) The Commissioners 1980 Standard Ordinary Mortality Table, or

(ii) At the election of the insurer for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or

(iii) Any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, — the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of subsection (5-b) of Section 83-7-25, the Standard Nonforfeiture Law for Life Insurance as amended, and for such policies issued on or after such operative date the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, — the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, — the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, — for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies — for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits — such tables as may be approved by the commissioner.

(3-a) **Computation of minimum standard for annuities:** — Except as provided in subsection (3-b), the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection (3-a), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in subsections (4) and (4-a) of this section and the following tables and interest rates:

(a) For individual annuity and pure endowment contracts, issued before January 1, 1980, excluding any disability and accidental death benefits in such contracts, — the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent (6%) interest for single premium immediate annuity contracts, and four percent (4%) interest for all other individual annuity and pure endowment contracts.

(b) For individual single premium immediate annuity contracts issued on or after January 1, 1980, excluding any disability and accidental death benefits in such contracts, — the 1971 Individual Annuity Mortality Table, or any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent (7-½%) interest.

(c) For individual annuity and pure endowment contracts issued on or after January 1, 1980, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, — the 1971 Individual Annuity Mortality Table, or any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and five and one-half percent (5-½%) interest for single premium deferred annuity and pure endowment contracts and four and one-half percent (4-½%) interest for all other such individual annuity and pure endowment contracts.

(d) For all annuities and pure endowments purchased prior to January 1, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, — the 1971 Group Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent (6%) interest.

(e) For all annuities and pure endowments purchased on or after January 1, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, — the 1971 Group Annuity Mortality Table, or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent (7-½%) interest.

After September 1, 1975, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection (3-a) after a specified date before January 1, 1979, which shall be the operative date of this subsection for such insurer, provided an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January 1, 1979.

(3-b) **Computation of minimum standard by calendar year of issue:**

(a) Applicability of this subsection.

(i) The interest rates used in determining the minimum standard for the valuation of:

(A) All life insurance policies issued in a particular calendar year, on or after the operative date of Section (5-c) of the Standard Nonforfeiture Law for Life Insurance (Section 83-7-25(5-c));

(B) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1984;

(C) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1984, under group annuity and pure endowment contracts; and

(D) The net increase, if any, in a particular calendar year after January 1, 1984, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in this subsection.

(ii) [Blank]

(b) Calendar year statutory valuation interest rates.

(i) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one percent (¼ of 1%):

(A) For life insurance,

$I = .03 + W (R1 — .03) + W/2 (R2 — .09);$

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$I = .03 + W (R — .03)$

where R1 is the lesser of R and .09, R2 is the greater of R and .09, R is the reference interest rate defined in this section, and W is the weighting factor defined in this section;

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in (B) above, the formula for life insurance stated in (A) above shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten (10) years and the formula for single premium immediate annuities stated in (B) above shall apply to annuities and guaranteed interest contracts with guarantee duration of ten (10) years or less;

(D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in (B) above shall apply;

(E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in (B) above shall apply.

(ii) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent (½ of 1%), the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when Section (5-c) of the Standard Nonforfeiture Law for Life Insurance (Section 83-7-25(5-c)) becomes operative.

(c) Weighting factors

(i) The weighting factors referred to in the formulas stated above are given in the following tables:

(A) Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45

Guarantee Duration (Years)	Weighting Factors
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(B) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

(C) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in (B) above, shall be as specified in tables 1., 2. and 3. below, according to the rules and definitions in 4. and 5. below:

1. For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

2. For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in 1. above increased by:

Plan Type		
A	B	C
.15	.25	.05

3. For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one (1) year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve (12) months beyond the valuation date, the factors shown in 1. or

derived in 2. increased by:

Plan Type		
A	B	C
.05	.05	.05

4. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty (20) years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

5. Plan type as used in the above tables is defined as follows:

Plan Type A: At any time policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) without such adjustment but in installments over five (5) years or more, or (3) as an immediate life annuity, or (4) no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only (1) with adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) without such adjustment but in installments over five (5) years or more, or (3) no withdrawal permitted. At the end of interest rate guarantee funds may be withdrawn without such adjustment in a single sum or installments over less than five (5) years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five (5) years either (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(ii) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this subsection, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(d) Reference interest rate.

(i) The reference interest rate referred to in paragraph (b) of this subsection shall be defined as follows:

(A) For all life insurance, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or year of purchase of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (B) above, with guarantee duration in excess of ten (10) years, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (B) above, with guarantee duration of ten (10) years or less, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(E) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(F) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in (B) above, the average over a period of twelve (12) months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(e) Alternative method for determining reference interest rates.

(i) In the event that the monthly average of the composite yield on seasoned corporate bonds, is no longer published by Moody's Investors Service, Inc., or in the event that the National Association of Insurance Commissioners determines that the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by regulation promulgated by the commissioner, may be substituted.

(ii) [Blank]

(4) **Reserve valuation method-life insurance and endowment benefits:** — Except as otherwise provided in subsections (4-a) and (7), reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one (1) year higher than the age at issue of such policy.

(b) A net one-year term premium for such benefits provided for in the first policy year.

Provided that for any life insurance policy issued on or after January 1, 1987, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (7), be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph and the reserve as of such policy anniversary calculated as described in that paragraph, but with (i) the value defined in subparagraph (a) of that paragraph being reduced by fifteen percent (15%) of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on such date as an endowment, and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in subsections (3-a) and (3-b) shall be used.

Reserves according to the commissioners reserve valuation method for: — (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended; (iii) disability and accidental death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraphs of this section.

(4-a) **Reserve valuation method—annuity and pure endowment benefits:** — This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(5) **Minimum reserves:** — In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of the standard nonforfeiture law (Section 83-7-25), be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (4), (4-a), (7) and (8) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(6) **Optional reserve calculation:** — Reserves for all policies and contracts issued prior to the effective date of Section 83-7-25 (the standard nonforfeiture law) may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts or benefits as established by the commissioner, issued on or after the operative date of Section 83-7-25 (the standard nonforfeiture law), may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for herein.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(7) **Reserve calculation-valuation net premium exceeding the gross premium charges:** — If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon, but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in subsections (3) and (3-b).

Provided that for any life insurance policy issued on or after January 1, 1987, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection (7) shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (4), ignoring the second paragraph of subsection (4). The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (4), including the second paragraph of that subsection, and the minimum reserve calculated in accordance with this subsection (7).

(8) **Reserve calculation-indeterminate premium plans:** — In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (4), (4-a) and (7), the reserves which are held under any such plan must:

(a) Be appropriate in relation to the benefits and the pattern of premiums for that plan, and

(b) Be computed by a method which is consistent with the principles of this standard valuation law as determined by regulations promulgated by the commissioner.

(9) **Actuarial opinion of reserves:** —

(a) Every life insurance company doing business in this state annually shall submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner by regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

(b)(i) Every life insurance company, except as exempted by or in accordance with regulation, shall also annually include in the opinion required by paragraph (a) of this subsection an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(ii) The commissioner may provide by regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

(c) Each opinion required by paragraph (b) of this subsection shall be governed by the following provisions:

(i) A memorandum, in form and substance acceptable to the commissioner as specified by regulation, shall be prepared to support each actuarial opinion.

(ii) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by regulation or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the regulations or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

(d) Every opinion shall be governed by the following provisions:

(i) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1994.

(ii) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by regulation.

(iii) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner may by regulation prescribe.

(iv) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(v) For the purposes of this section, “qualified actuary” means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in such regulations.

(vi) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision or conduct with respect to the actuary’s opinion.

(vii) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in regulations by the commissioner.

(viii) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder; however, the memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(e) This subsection shall become operative with the filing of the December 31, 1994, annual statement.

SOURCES: Codes, 1942, § 5669-02; Laws, 1948, ch. 345, § 2; Laws, 1962, ch. 460, § 1; Laws, 1966, ch. 523, § 1; Laws, 1975, ch. 412, § 1; Laws, 1979, ch. 314, § 1; Laws, 1983, ch. 316, § 1; Laws, 1994, ch. 314, § 1, eff from and after passage (approved March 10, 1994).

Cross References — Provisions relative to requirement of a deposit with the State Treasurer as part of the reserve liabilities of domestic life insurance companies, see § 83-7-21.

Standard nonforfeiture law for life insurance, see § 83-7-25.

Federal Aspects — Section 408 of the Internal Revenue Code, see 26 USCS § 408.

RESEARCH REFERENCES

ALR. Theory of waiver as applicable where provisions of policy or acts of insurer are inconsistent with statutory requirements. 9 A.L.R.2d 1436.

Am Jur. 43 Am. Jur. 2d, Insurance § 71.

CJS. 44 C.J.S., Insurance §§ 121-123.

Law Reviews. 1979 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 813, December 1979.

§ 83-7-25. Standard nonforfeiture law.

(1) **Title:** — This section shall be known as the standard nonforfeiture law for life insurance.

(2) **Nonforfeiture provisions:** — In the case of policies issued on or after the operative date of this section as defined in subsection (10), no policy of life insurance, except as stated in subsection (9), shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner of insurance are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified and are essentially in compliance with subsection (8) of this law:

(a) That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty (60) days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be hereinafter specified.

In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty (60) days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(b) That, upon surrender of the policy within sixty (60) days after the due date of any premium payment in default after premiums have been paid for at least three (3) full years in the case of ordinary insurance or five (5) full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty (60) days after the due date of the premium in default.

(d) That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(e) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty (20) policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand therefor with surrender of the policy.

(3) **Computation of cash surrender value:** — Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection (2), shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (1) the then present value of the adjusted premiums as defined in subsections (5), (5-a), (5-b) and (5-c), corresponding to premiums which would have fallen due on and after such anniversary, and (2) the amount of any indebtedness to the company on the policy.

Provided, however, that for any policy issued on or after the operative date of subsection (5-c) as defined therein, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in the first paragraph of this subsection shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

Provided, further, that for any family policy issued on or after the operative date of subsection (5-c) as defined therein, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one (71), the cash surrender value referred to in the first paragraph of this subsection shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

Any cash surrender value available within thirty (30) days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection (2), shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by an indebtedness to the company on the policy.

(4) **Computation of paid-up nonforfeiture benefits:** — Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(5) **Calculation of adjusted premiums:** — This subsection (5) shall not apply to policies issued on or after the operative date of subsection (5-c) as defined therein. Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (1) the then present value of the future guaranteed benefits provided for by the policy; (2) two percent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (3) forty percent (40%) of the adjusted premium for the first policy year; (4) twenty-five percent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (3) and (4) above, no adjusted premium shall be deemed to exceed four percent (4%) of the amount of insurance or level amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent level amount thereof for the purpose of this subsection shall be deemed to be the level amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two (2) paragraphs of this subsection except that, for the purposes of (2), (3) and (4) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in subsections (5-a) and (5-b), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the commissioners 1941 standard ordinary mortality table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three (3) years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent (3½%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred and thirty percent (130%) of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present value may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(5-a) **Calculation of adjusted premiums-ordinary policies:** — This subsection (5-a) shall not apply to ordinary policies issued on or after the operative date of subsection (5-c) as defined therein. In the case of ordinary policies issued on or after the operative date of this subsection (5-a) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the commissioners 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent (3½%) per annum except that a rate of interest not exceeding four percent (4%) per annum may be used for policies issued on or after September 1, 1975, and prior to January 1, 1980, and a rate of interest not exceeding five and one-half percent (5½%) per annum may be used for policies issued on or after January 1, 1980, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half (6½%) per annum may be used and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six (6) years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1958 extended term insurance table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (5-a), any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such company), this subsection shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this subsection for such company shall be January 1, 1966.

(5-b) **Calculation of adjusted premiums-industrial policies:** — This subsection (5-b) shall not apply to industrial policies issued on or after the operative date of subsection (5-c) as defined therein. In the case of industrial policies issued on or after the operative date of this subsection (5-b) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the commissioners 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest shall not exceed three and one-half percent (3½%) per annum, except that a rate of interest not exceeding four percent (4%) per annum may be used for policies issued on or after September 1, 1975, and prior to January 1, 1980, and a rate of interest not exceeding five and one-half percent (5½%) per annum may be used for policies issued on or after January 1, 1980, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent (6½%) per annum may be used. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1961 industrial extended term insurance table. Provided, further, that for insurance issued on a substandard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (5-b), any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such company), this subsection shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this subsection for such company shall be January 1, 1968.

(5-c) **Calculation of adjusted premiums by the nonforfeiture net level premium method:** —

(a) This subsection shall apply to all policies issued on or after the operative date of this subsection (5-c) as defined herein. Except as provided in paragraph (g) of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) one percent (1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and (iii) one hundred twenty-five percent (125%) of the nonforfeiture net level premium as hereinafter defined. Provided, however, that in applying the percentage specified in (iii) above no nonforfeiture net level premium shall be deemed to exceed four percent (4%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

(b) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one (1) per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(c) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(d) Except as otherwise provided in paragraph (g) of this subsection, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (A) the sum of (i) the then present value of the then future guaranteed benefits provided for by the policy and (ii) the additional expense allowance, if any, over (B) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(e) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of (i) one percent (1%) of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten (10) policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten (10) policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (ii) one hundred twenty-five percent (125%) of the increase, if positive, in the nonforfeiture net level premium.

(f) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (A) by (B) where:

(A) Equals the sum of

(i) The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, and

(ii) The present value of the increase in future guaranteed benefits provided for by the policy, and

(B) Equals the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(g) Notwithstanding any other provisions of this subsection to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(h) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of (i) the commissioners 1980 standard ordinary mortality table or (ii) at the election of the insurer for any one or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors; shall for all policies of industrial insurance be calculated on the basis of the commissioners 1961 standard industrial mortality table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection for policies issued in that calendar year. Provided, however, that:

(i) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection, for policies issued in the immediately preceding calendar year.

(ii) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (2), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(iii) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(iv) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioners 1961 industrial extended term insurance table for policies of industrial insurance.

(v) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(vi) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioners 1980 extended term insurance table.

(vii) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1961 standard industrial mortality table or the commissioners 1961 industrial extended term insurance table.

(i) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent (125%) of the calendar year statutory valuation interest rate for such policy as defined in the standard valuation law (Section 83-7-23), rounded to the nearer one-quarter of one percent (¼ of 1%).

(j) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

(k) After the effective date of this subsection (5-c), any company may file with the commissioner a written notice of its election to comply with the provision of this subsection after a specified date before January 1, 1989, which shall be the operative date of this subsection for such company. If a company makes no such election, the operative date of this subsection for such company shall be January 1, 1989.

(6) **Nonforfeiture benefits for indeterminate premium plans:** — In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in subsections (2), (3), (4), (5), (5-a), (5-b) or (5-c) herein, then:

(a) The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insured as the minimum benefits otherwise required by subsections (2), (3), (4), (5), (5-a), (5-b) or (5-c) herein;

(b) The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;

(c) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this standard nonforfeiture law for life insurance, as determined by regulations promulgated by the commissioner.

(7) **Proration of values; net value of paid-up additions:** — Any cash surrender value and any paid-up nonforfeiture benefits, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (3), (4), (5), (5-a), (5-b) and (5-c) may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions. Notwithstanding the provisions of subsection (3), additional benefits payable (i) in the event of death or dismemberment by accident or accidental means, (ii) in the event of total and permanent disability, (iii) as reversionary annuity or deferred reversionary annuity benefits, (iv) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (v) as term insurance on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six (26), is uniform in amount after the child's age is one (1), and has not become paid-up by reason of the death of a parent of the child, and (vi) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(8) **Consistency of progression of cash surrender values with increasing policy duration:** — This section, in addition to all other applicable sections of this law, shall apply to all policies issued on or after January 1, 1987. Any cash surrender value available under the policy in the event of

default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent (2/10 of 1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years, from the sum of (a) the greater of zero and the basic cash value hereinafter specified, and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such anniversary. Provided, however, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in subsection (3), shall be the same as are the effects specified in subsection (3), on the cash surrender values defined in that subsection.

The nonforfeiture factor for each policy year shall be an amount equal to an percentage of the adjusted premium for the policy year, as defined in subsection (5-c). Except as is required by the next succeeding sentence of this paragraph, such percentage:

(a) Must be the same percentage for each policy year between the second policy anniversary and the later of (i) the fifth policy anniversary and (ii) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent (2/10 of 1%) in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and

(b) Must be such that no percentage after the later of the two (2) policy anniversaries specified in the preceding item (a) may apply to fewer than five (5) consecutive policy years.

Provided, that no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in subsection (5-c), were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this subsection shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this law. The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections (2), (3), (4), (5-c) and (7). The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed as items (i) through (vi) in subsection (7) shall conform with the principles of this subsection (8).

(9) **Exceptions:** — This section shall not apply to any of the following:

(a) Reinsurance,

(b) Group insurance,

(c) Pure endowment,

(d) Annuity or reversionary annuity contract,

(e) Term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty (20) years or less expiring before age seventy-one (71), for which uniform premiums are payable during the entire term of the policy,

(f) Term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in subsections (5), (5-a), (5-b) and (5-c), is less than the adjusted premium so calculated on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty (20) years or less expiring before age seventy-one (71), for which uniform premiums are payable during the entire term of the policy,

(g) Policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in subsections (3), (4), (5), (5-a), (5-b) and (5-c), exceeds two and one-half percent (2½%) of the amount of insurance at the beginning of the same policy year, nor

(h) Policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy.

For purposes of determining the applicability of this chapter, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

(10) **Effective date:** — After the effective date of this chapter, any company may file with the commissioner a written notice of its election to comply with the provisions of this chapter after a specified date before January 1, 1948. After the filing of such notice, then upon such specified date (which shall be the operative date for such company) this chapter shall become operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date of this chapter for such company shall be January 1, 1948.

SOURCES: Codes, 1942, § 5669-03; Laws, 1948, ch. 345, § 3; Laws, 1962, ch. 460, § 2; Laws, 1966, ch. 523, § 2; Laws, 1975, ch. 412, § 2; Laws, 1979, ch. 314, § 2; Laws, 1983, ch. 316, § 2, eff from and after July 1, 1984.

Cross References — Standard valuation of life insurance policies, see § 83-7-23.

RESEARCH REFERENCES

ALR. Theory of waiver as applicable where provisions of policy or acts of insurer are inconsistent with statutory requirements. 9 A.L.R.2d 1436.

CJS. 44 C.J.S., Insurance § 393.

45 C.J.S., Insurance §§ 956-960.

Law Reviews. 1979 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 813, December 1979.

§ 83-7-26. Maximum rate of interest on policy loans; determination; changes in rates; notification to policyholder.

(1) A life insurance policy which provides for policy loans shall contain a provision concerning maximum policy loan interest rates as follows:

(a) A provision permitting a maximum interest rate of not more than eight percent (8%) per annum; or

(b) A provision permitting an adjustable maximum interest rate established from time to time by the life insurer as hereinafter determined. The rate of interest charged on a policy loan made under this paragraph (b) shall not exceed the higher of the following:

(i) The rate used to compute the cash surrender values under the policy during the applicable period, plus one percent (1%) per annum; or

(ii) Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc., or any successor thereto. In the event that Moody's Corporate Bond Yield Average-Monthly Average Corporates is no longer published, a substantially similar average established by regulation issued by the commissioner shall be used.

(2) If the maximum rate of interest is determined pursuant to subsection (1)(b) of this section, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy. Such maximum rate must be determined at regular intervals at least once every twelve (12) months, but not more frequently than once in any period of three (3) months.

(3) At the intervals specified in the policy pursuant to subsection (2) of this section:

(a) The rate being charged may be increased as permitted by subsection (1)(b) of this section whenever such increase would be one-half of one percent (½ of 1%) or more per annum.

(b) The rate being charged must be reduced whenever such reduction as determined under subsection (1)(b) of this section would decrease that rate by one-half percent (½%) or more per annum.

(4) The life insurer shall:

(a) Notify the policyholder of the initial rate of interest on the loan at the time a cash loan is made.

(b) Notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in paragraph (c) of this subsection.

(c) Send to policyholders with loans reasonable advance notice of any increase in the rate.

(d) Include in notices under this subsection the substance of the pertinent provisions of subsections (1) and (2) of this section.

(5) The loan value of the policy shall be determined in a manner consistent with Chapter 7, Title 83, Mississippi Code of 1972, but no policy shall terminate in a policy year as the sole result of a change in the interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

(6) The pertinent provisions of subsections (1) and (2) of this section shall be set forth in substance in the policies to which they apply.

(7) For purposes of this section:

(a) The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy.

(b) The term "policy loan" includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due.

(c) The term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer.

(d) The term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

(8) No other law of this state shall apply to policy loan interest rates unless made specifically applicable to such rates.

(9) The provisions of this section shall not apply to any insurance contract issued before January 1, 1984.

SOURCES: Laws, 1983, ch. 309, eff from and after January 1, 1984.

§ 83-7-27. Separate accounts to fund pension or profit sharing plans or to provide for life insurance or annuities.

Any domestic life insurance company may establish one (1) or more separate accounts, and may allocate thereto amounts (including without limitation proceeds applied under optional modes of settlement or under dividend options) to fund pension or profit sharing plans or to provide for life insurance or annuities (and benefits incidental thereto), payable in fixed or variable amounts or both.

SOURCES: Codes, 1942, § 5649-31; Laws, 1968, ch. 475, § 1; Laws, 1978, ch. 457, § 1, eff from and after July 1, 1978.

§ 83-7-29. Investment of amounts allocated to separate accounts.

(1) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subsection (2) of this section:

(a) amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies; and

(b) the investments in such separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(2) Except with the approval of the commissioner of insurance and under such conditions as to investments and other matters as he may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for:

(a) benefits guaranteed, as to dollar amount and duration; and

(b) funds guaranteed as to principal amount or stated rate of interest shall not be maintained in a separate account.

(3) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one (1) or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account is made:

(a) by a transfer of cash; or

(b) by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the commissioner of insurance. The commissioner of insurance may approve other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

SOURCES: Codes, 1942, § 5649-32; Laws, 1968, ch. 475, § 2; 178, ch. 457, § 2, eff from and after July 1, 1978.

RESEARCH REFERENCES

CJS. 44 C.J.S., Insurance § 154-156.

§ 83-7-31. Crediting of income or charging of losses on separate accounts.

The income, gains and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account without regard to other income, gains or losses of the company.

SOURCES: Codes, 1942, § 5649-33; Laws, 1968, ch. 475, § 3; Laws, 1978, ch. 457, § 3, eff from and after July 1, 1978.

§ 83-7-33. Valuation of assets allocated to separate accounts.

Unless otherwise approved by the commissioner of insurance, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is not readily available market, then in accordance with the terms of the contract or the rules or other written agreement applicable to such separate account; provided, that unless otherwise approved by the commissioner of insurance, that portion if any of the assets of such separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in Section 83-7-29, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets.

SOURCES: Codes, 1942, § 5649-34; Laws, 1968, ch. 475, § 4; Laws, 1978, ch. 457, § 4, eff from and after July 1, 1978.

§ 83-7-35. Ownership of amounts allocated to separate accounts.

The amounts allocated to a separate account in the exercise of the power granted by Sections 83-7-27 through 83-7-49 shall be owned by the company, and the company shall not be, or hold itself out to be, a trustee with respect to such amounts. To the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

SOURCES: Codes, 1942, § 5649-35; Laws, 1968, ch. 475, § 5; Laws, 1978, ch. 457, § 5, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 108.

CJS. 44 C.J.S., Insurance §§ 157, 158.

§ 83-7-37. Powers of domestic companies establishing separate accounts.

To the extent any domestic life company deems it necessary to comply with any applicable federal or state law, such company, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of such account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account.

SOURCES: Codes, 1942, § 5649-36; Laws, 1968, ch. 475, § 6, 1978, ch. 457, § 6, eff from and after July 1, 1978.

§ 83-7-39. Reserve liability for variable contracts.

The reserve liability for variable contracts shall be established in accordance with actuarial procedures which recognize the variable nature of the benefits to be provided and any mortality guarantees.

SOURCES: Codes, 1942 § 5649-37; Laws, 1968, ch. 475 § 7; Laws, 1978, ch. 457, § 7, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 71.

CJS. 44 C.J.S., Insurance §§ 159-161.

§ 83-7-41. Contents of contract delivered or issued for delivery in state providing for benefits in variable amounts.

If any contract delivered or issued for delivery in this state provides for payment of benefits in variable amounts, it shall contain a statement of the essential features of the procedure to be followed by the insurance company in determining the dollar amounts of such variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a statement that the benefits thereunder are on a variable basis.

SOURCES: Codes, 1942, § 5649-38; Laws, 1968, ch. 475, § 8; Laws, 1978, ch. 457, § 8, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

§ 83-7-43. Authority to deliver or issue for delivery within state contracts providing for benefits in variable amounts.

No domestic life insurance company and no other life insurance company shall deliver or issue for delivery within this state, variable contracts unless it is licensed or organized to do a life insurance or annuity business in this state, and has satisfied the commissioner of insurance that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner of insurance shall consider among other things:

(a) the history and financial condition of the company;

(b) the character, responsibility and general fitness of the officers and directors of the company; and

(c) the law and regulation under which the company is authorized in the state of domicile to issue variable contracts. The state of entry of an alien company shall be deemed its place of domicile for this purpose.

If the company is a subsidiary of an admitted life insurance company, or affiliated with such company through common management or ownership, it may be deemed by the commissioner of insurance to have met the provisions of this section if either it or the parent or the affiliated company meets the requirements hereof.

SOURCES: Codes, 1942, § 5649-39; Laws, 1968, ch. 475, § 9; Laws, 1978, ch. 457, § 9, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-7-45. Authority of commissioner to regulate issuance and sale of contracts for separate accounts and those who issue and sell them.

Notwithstanding any other provision of law, the commissioner of insurance shall have sole and exclusive authority to regulate the issuance and sale of contracts for which separate accounts may be established, the insurers which issue them and the agents or other persons who sell them. The commissioner of insurance also shall have the sole authority to issue such reasonable rules and regulations as may be appropriate to carry out the purposes and provisions of Sections 83-7-27 through 83-7-49, including rules and regulations applicable to the licensing and qualification of agents or other persons who sell such contracts.

SOURCES: Codes, 1942, § 5649-40; Laws, 1968, ch. 475, § 10; Laws, 1978, ch. 457, § 10, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 75.

CJS. 44 C.J.S. Insurance § 138.

§ 83-7-47. Repealed.

Repealed by Laws, 1978, ch. 457, § 12, eff from and after July 1, 1978. [Codes, 1942, § 5649-41; Laws, 1968, ch. 475, § 11]

Editor's Note — Former § 83-7-47 required registration of separate funds.

§ 83-7-49. Application of insurance laws to separate accounts; contents of individual variable life insurance contracts.

Except for Section 83-7-25 of the insurance law in the case of a variable life insurance policy and except as otherwise provided in Sections 83-7-27 through 83-7-49, all pertinent provisions of the insurance laws of this state shall apply to separate accounts and contracts issued in connection therewith. Any individual variable life insurance contract, delivered or issued for delivery in this state shall contain nonforfeiture provisions appropriate to such a contract.

SOURCES: Codes, 1942, § 5649-42; Laws, 1968, ch. 475, § 12; Laws, 1978, ch. 457, § 11, eff from and after July 1, 1978.

§ 83-7-51. Notice of right to return policy; effect of return.

Every individual life insurance policy or contract issued for delivery in the State of Mississippi on or after July 1, 1989, by an insurance company or association shall have printed thereon or attached thereto a notice stating, in substance, that the person to whom the policy or contract is issued shall be permitted to return the policy or contract within ten (10) days of its delivery to said purchaser and to have the premium paid refunded if, after examination of the policy or contract, the purchaser is not satisfied with it for any reason. If a policyholder or purchaser, pursuant to such notice, returns the policy or contract to the insurance company or association at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning, and the parties shall be in the same position as if no policy or service contract had been issued.

SOURCES: Laws, 1989, ch. 340, § 1, eff from and after July 1, 1989.

RESEARCH REFERENCES

ALR. Insurer's duty, and effect of its failure, to provide insured or payee with copy of policy or other adequate documentation of its terms. 78 A.L.R.4th 9.

ACCELERATED BENEFITS

Sec.
83-7-101. Definitions.
83-7-103. Accelerated benefit provisions as not representing morbidity risks.
83-7-105. Acknowledgement of concurrence for payout prior to payment.
83-7-107. Options for payment; minimum amounts.
83-7-109. Requirement that name given coverage be descriptive of coverage provided; disclosure of information; signatures.
83-7-111. Effective date of accelerated benefit.
83-7-113. Waiver of premium.
83-7-115. Discrimination amongst insureds prohibited.
83-7-117. Disclosure to consumer of any separate identifiable premium for accel-

erated benefit; options; examples; pro rata reduction in cash value; non-interest bearing lien against death benefit of policy; accidental death benefit not affected by accelerated benefit.

83-7-119. Filing valuation method and assumptions with Department of Insurance; content.

§ 83-7-101. Definitions.

(a) "Accelerated benefits" are benefits payable under a life insurance contract:

(i) To a policy owner, during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider;

(ii) Which reduce the death benefit otherwise payable under the life insurance contract (excluding accidental death and other ancillary benefits); and

(iii) Which are payable, in a lump sum or in periodic payments, at the option of the insured.

(b) "Qualifying event" means one or more of the following:

(i) A medical condition which would result in a drastically limited life span, for example, twenty-four (24) months or less;

(ii) A medical condition which has required or requires extraordinary medical intervention, such as, but not limited to, major organ transplant or continuous artificial life support, without which the insured would die;

(iii) A medical condition which would, in the absence of extensive or extraordinary medical treatment, result in a drastically limited life span. Such conditions may include, but are not limited to, one or more of the following:

1. Coronary artery disease resulting in an acute infarction or requiring surgery;
2. Permanent neurological deficit resulting from cerebral vascular accident;
3. End stage renal failure; or
4. Other qualifying event which the Commissioner of Insurance shall approve for any particular filing.

SOURCES: Laws, 1991, ch. 464, § 1, eff from and after July 1, 1991.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-7-103. Accelerated benefit provisions as not representing morbidity risks.

Accelerated benefit riders and life insurance policies with accelerated benefit provisions do not represent morbidity risks.

SOURCES: Laws, 1991, ch. 464, § 2, eff from and after July 1, 1991.

§ 83-7-105. Acknowledgement of concurrence for payout prior to payment.

Prior to the payment of the accelerated benefit, the insurer shall receive from any assignee or irrevocable beneficiary a signed acknowledgement of concurrence for payout.

SOURCES: Laws, 1991, ch. 464, § 3, eff from and after July 1, 1991.

§ 83-7-107. Options for payment; minimum amounts.

The benefit shall be paid in a lump sum, or in periodic payments for a fixed period of time, or in a fixed amount for an indefinite period of time, at the option of the insured. Companies may set minimums on the face amount of contracts for which the benefit shall be offered.

SOURCES: Laws, 1991, ch. 464, § 4, eff from and after July 1, 1991.

§ 83-7-109. Requirement that name given coverage be descriptive of coverage provided; disclosure of information; signatures.

(1) The name given the coverage must be descriptive of the coverage provided, and the terminology "accelerated benefit" shall be included in the description.

(2) Clear disclosure is required at the time of application for the policy and at the time the accelerated benefit payment request is submitted of the potential tax implications of receiving this payout. The disclosure statement shall indicate that receipt of these accelerated benefits may be taxable, and insured should seek assistance from their personal tax advisor. Such disclosure shall be prominently displayed on the first page of the policy or rider and any other related documents.

(3) Prior to or concurrently with the application, the applicant shall be given an illustration numerically demonstrating the effect of the payment of a benefit on the policy's cash value, death benefit, premium, policy loans and policy liens. In the event of direct mail solicitations, the disclosure shall be made upon acceptance of the application.

(4) Prior to or concurrently with the application, the applicant shall be given a written disclosure including, but not necessarily limited to, a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits. The disclosure shall be signed by the applicant, the policy owner and writing agent. In the event of direct mail solicitations, the disclosure shall be made upon acceptance of the application.

(5) This statement shall appear on the face of every policy or rider: "Cash values, loan values and the death benefit will be reduced if you receive an

accelerated benefit." For policies which have no cash or loan values, this statement shall be appropriately modified.

SOURCES: Laws, 1991, ch. 464, § 5, eff from and after July 1, 1991.

§ 83-7-111. Effective date of accelerated benefit.

The accelerated benefit shall be effective on the effective date of the policy or rider.

SOURCES: Laws, 1991, ch. 464, § 6, eff from and after July 1, 1991.

§ 83-7-113. Waiver of premium.

The accelerated benefit provision may or may not provide for the waiver of premium in the absence of a regular waiver of premium provision being in effect. At the time the benefit is claimed, the company shall explain any continuing premium requirement to keep the policy in force.

SOURCES: Laws, 1991, ch. 464, § 7, eff from and after July 1, 1991.

§ 83-7-115. Discrimination amongst insureds prohibited.

Insurers shall not unfairly discriminate among insureds with differing qualifying events or among insureds with similar qualifying events. Insurers shall not apply further conditions on the payment of the accelerated benefits other than those conditions specified in the policy or rider.

SOURCES: Laws, 1991, ch. 464, § 8, eff from and after July 1, 1991.

§ 83-7-117. Disclosure to consumer of any separate identifiable premium for accelerated benefit; options; examples; pro rata reduction in cash value; non-interest bearing lien against death benefit of policy; accidental death benefit not affected by accelerated benefit.

(1) The company shall disclose to the consumer any separate identifiable premium for the accelerated benefit. Those companies indicating that this accelerated benefit is offered without additional premium shall furnish a written explanation to the State Insurance Department when filing the product.

(2) Two (2) options are available to finance the benefit:

(a) The insured may make an additional premium payment or cost of insurance charge; or

(b) The insured may take a present value of the face amount. The calculation would be based on any applicable actuarial discount appropriate to the policy design.

(3) Companies are required to illustrate, by numerical example, any effect the payment of the accelerated benefit has on the face amount, specified

amount, accumulation account, cash values, loan balance and future premiums. Each time an accelerated benefit payment is paid, the company is required to send a statement to the policy owner showing the numerical expression stated in this subsection. Upon the payment of an accelerated benefit amount, the company shall issue an endorsement to the policy to reflect any new, reduced, in-force face amount of the contract.

(4)(a) When an accelerated benefit is payable, the NAIC preference is for a pro rata reduction in the cash value, not a reduction of the full amount.

(b) Alternatively, the payment of accelerated benefits can be considered a non-interest bearing lien against the death benefit of the policy or rider and the access to the cash value shall be restricted to any excess of the cash value over the sum of other outstanding loans and the lien. If the lien approach is used, any accelerated death benefit payments shall first be applied toward repaying the portion of any other outstanding policy loans which would cause the sum of the accelerated death benefit and policy loans to exceed the cash value. Future access to the cash values and to policy loans would be limited to the difference between the cash value and the sum of the lien and any other outstanding policy loans.

(c) In either case, the death benefit may not be reduced more than the amount of the accelerated benefits paid plus any applicable actuarial discount appropriate to the policy design for policies without additional premium payments. The accidental death benefit, if any, in the policy or rider shall not be affected by the payment of the accelerated benefit.

SOURCES: Laws, 1991, ch. 464, § 9, eff from and after July 1, 1991.

§ 83-7-119. Filing valuation method and assumptions with Department of Insurance; content.

At the time of filing of the policy form, the valuation method and assumptions need to be filed with the Department of Insurance. The assumptions should reflect the statutory mortality and interest rate assumptions for life insurance policies and appropriate assumptions for the other provisions incorporated in the policy form.

SOURCES: Laws, 1991, ch. 464, § 10, eff from and after July 1, 1991.

VIATICAL SETTLEMENTS

SEC.

83-7-201. Short title.
83-7-203. Definitions.
83-7-205. Viatical settlement providers, representatives and brokers to be licensed by Commissioner of Insurance; licensing requirements.
83-7-207. Suspension, revocation, and refusal to renew license; hearing.
83-7-209. Settlement application, contract and disclosure statement forms to be filed with and approved by Commissioner of Insurance.
83-7-211. Annual statement to be filed with Commissioner; identity of viator not to be disclosed except under certain conditions.

83-7-213. Examination of records, books, files and other information; provider to maintain records of each settlement until 5 years after death of insured.
83-7-215. Disclosure requirements.
83-7-217. Informed consent; confidentiality of medical information; 15-day right to rescind; death of insured within 15-day period deemed rescission; transfer of proceeds of viatical settlement; post-settlement contacts with insured for purpose of determining health status.
83-7-219. Authority of Commissioner to adopt rules and regulations.
83-7-221. Violations of provisions considered unfair trade practice.
83-7-223. Continuation of viatical settlement business pending approval or disapproval of license application filed on or before July 1, 2000.

§ 83-7-201. Short title.

Sections 83-7-201 through 83-7-223 shall be known and may be cited as the "Viatical Settlements Act."

SOURCES: Laws, 2000, ch. 323, § 1, eff from and after July 1, 2000.

Cross References — Viatical settlement investment contracts classified and regulated as securities, see § 75-71-105.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-7-203. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Person" means a legal entity including, but not limited to, an individual, partnership, limited liability company, association, trust, corporation or other legal entity.

(b) "Viatical settlement representative" means a person who is a licensed agent and acts or aids in any manner in the solicitation of a viatical settlement and who is deemed to represent only the viatical settlement provider. Viatical settlement representative shall not include:

(i) An attorney, an accountant, a financial planner or any person exercising a power of attorney granted by a viator; or

(ii) Any person who is retained to represent a viator and whose compensation is paid by or at the direction of the viator regardless of whether the viatical settlement is consummated.

(c) "Viatical settlement broker" means a licensed agent who acts on behalf of a viator and for a fee, commission or other valuable consideration offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. Irrespective of the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, accountant or financial planner retained to represent the viator whose compensation is paid directly by or at the direction of the viator and who is paid regardless of whether or not the viatical settlement is consummated.

(d) "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a viator that establishes the terms under which the viatical settlement provider shall pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of all or a portion of the insurance policy or certificate of insurance to the viatical settlement provider. A viatical settlement contract also includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy.

(e) "Viatical settlement provider" means a person, other than a viator, that enters into a viatical settlement contract. Viatical settlement provider also means a person that obtains financing for the purchase, acquisition, transfer or other assignment of one or more viatical settlement contracts, viaticated policies or interests therein or otherwise sells, assigns, transfers, pledges, hypothecates or otherwise disposes of one or more viatical settlement contracts, viaticated policies or interests therein. Viatical settlement provider does not include:

(i) A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;

(ii) The issuer of a life insurance policy providing accelerated benefits under Sections 83-7-101 through 83-7-117 and pursuant to the contract; or

(iii) A natural person who enters into no more than one (1) agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit.

(f) "Viator" means the owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual who enters or seeks to enter into a viatical settlement contract.

(g) "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

(h) "Commissioner" means the Commissioner of Insurance.

SOURCES: Laws, 2000, ch. 323, § 2, eff from and after July 1, 2000.

§ 83-7-205. Viatical settlement providers, representatives and brokers to be licensed by Commissioner of Insurance; licensing requirements.

(1) A person shall not operate as a viatical settlement provider, viatical settlement representative or viatical settlement broker without first having obtained a license from the commissioner.

(2) Application for a viatical settlement representative or viatical settlement broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and these applications shall be accompanied by a fee of Fifty Dollars ($50.00).

(3) Application for a viatical settlement provider license shall be made to the commissioner by the applicant on a form prescribed by the commissioner. All applications shall be accompanied by a fee of Two Hundred Dollars ($200.00).

(4) Licenses may be renewed from year to year on January 1 upon payment of the annual renewal fees which shall be the same as the application fees. Failure to pay the fees by the renewal date results in expiration of the license.

(5) If an applicant attempting to obtain a license to become a viatical settlement representative or a viatical settlement broker has not been previously licensed within the last two (2) years to sell life insurance, the commissioner shall, as a test of the applicant's knowledge and other qualifications provided herein, require that the applicant submit to a written examination approved by the commissioner.

(6) The applicant shall provide information on forms required by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of Sections 83-7-201 through 83-7-223.

(7) Upon the filing of an application and the payment of the license fee, the commissioner shall issue a license if the commissioner finds that the applicant:

(a) Has provided a detailed plan of operation;

(b) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(c) Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for; and

(d) If a legal entity, provides a certificate of good standing from the state of its domicile.

(8) The commissioner shall not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and

maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be begun against the applicant by service of process on the commissioner.

SOURCES: Laws, 2000, ch. 323, § 3, eff from and after July 1, 2000.

§ 83-7-207. Suspension, revocation, and refusal to renew license; hearing.

(1) The commissioner may suspend, revoke or refuse to renew the license of a viatical settlement provider, viatical settlement representative or viatical settlement broker if the commissioner finds that:

(a) There was any material misrepresentation in the application for the license;

(b) The licensee or any officer, partner or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

(c) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

(d) The licensee has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(e) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

(f) The licensee no longer meets the requirements for initial licensure;

(g) The viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state or a financing entity; or

(h) The licensee has violated any provision of Sections 83-7-201 through 83-7-223.

(2) Before the commissioner shall deny a license application or suspend, revoke or refuse to renew the license of a viatical settlement provider, viatical settlement broker or viatical settlement representative, the commissioner shall conduct a hearing in accordance with Section 25-43-1 et. seq.

SOURCES: Laws, 2000, ch. 323, § 4, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in (1) (c), (d), (e), and (f). The word "The" was added at the beginning of each paragraph. The Joint Committee ratified the corrections at its May 16, 2002, meeting.

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

§ 83-7-209. Settlement application, contract and disclosure statement forms to be filed with and approved by Commissioner of Insurance.

A person shall not provide a viator a viatical settlement application, contract or disclosure statement form in this state unless it has been filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement application, contract or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public or otherwise misleading or unfair to the viator.

SOURCES: Laws, 2000, ch. 323, § 5, eff from and after July 1, 2000.

§ 83-7-211. Annual statement to be filed with Commissioner; identity of viator not to be disclosed except under certain conditions.

(1) Each viatical settlement provider issued a license under Sections 83-7-201 through 83-7-223 shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner by rule may prescribe.

(2) Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement representative, viatical settlement broker, insurance company, insurance agent, insurance broker, information bureau, rating agency or company, or any other person with actual knowledge of a viator's identity, shall not disclose that identity as a viator to any other person unless the disclosure:

(a) Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator has provided prior written consent to the disclosure;

(b) Is provided in response to an investigation by the commissioner or any other governmental officer or agency; or

(c) Is a term of or condition to the transfer of a viaticated policy by one viatical settlement provider to another viatical settlement provider.

SOURCES: Laws, 2000, ch. 323, § 6, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2)(b). The words "provided in response" were changed to "Is provided in response." The Joint Committee ratified the correction at its May 16, 2002, meeting.

§ 83-7-213. Examination of records, books, files and other information; provider to maintain records of each settlement until 5 years after death of insured.

(1) The commissioner, when the commissioner deems it reasonably necessary to protect the interests of the public, may examine the business and affairs of any licensee or applicant for a license. The commissioner may order any licensee or applicant to produce any records, books, files or other information reasonably necessary to ascertain whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(2) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner unless required by law.

(3) Records of all transactions of viatical settlement contracts shall be maintained by the viatical settlement provider and shall be available to the commissioner for inspection during reasonable business hours. A viatical settlement provider shall maintain records of each viatical settlement until five (5) years after the death of the insured.

SOURCES: Laws, 2000, ch. 323, § 7, eff from and after July 1, 2000.

§ 83-7-215. Disclosure requirements.

(1) A viatical settlement provider, viatical settlement representative or viatical settlement broker shall disclose the following information to the viator no later than the time of application:

(a) That possible alternatives exist to viatical settlement contracts for individuals with catastrophic, life threatening or chronic illnesses including any accelerated death benefits offered under the viator's life insurance policy;

(b) That some or all of the proceeds of the viatical settlement may be free from federal income tax and from state franchise and income taxes, and that assistance should be sought from a professional tax advisor;

(c) That proceeds of the viatical settlement could be subject to the claims of creditors;

(d) That receipt of the proceeds of a viatical settlement may adversely effect the viator's eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate government agencies;

(e) That the viator has the right to rescind a viatical settlement contract fifteen (15) calendar days after the receipt of the viatical settlement proceeds by the viator, as provided in Section 83-7-217(3);

(f) That funds shall be sent to the viator within two (2) business days after the viatical settlement provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and that the beneficiary has been designated pursuant to the viatical settlement contract; and

(g) That entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and that assistance should be sought from a financial adviser.

(2) A viatical settlement provider shall disclose the following information to the viator before the date the viatical settlement contract is signed by all parties:

(a) The affiliation, if any, that exist between the viatical settlement provider and the issuer of an insurance policy to be viaticated;

(b) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives and shall be advised to consult with his or her insurance producer or the company issuing the policy for advice on the proposed viatication; and

(c) The dollar amount of the current death benefit that is payable to the viatical settlement provider under the policy or certificate. The viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the viatical settlement provider's interest in those benefits.

(3) A viatical settlement provider shall maintain at its home or principal office a copy of every printed, published or prepared advertisement or "invitation to inquire" including any electronic advertising it has used in this state for at least three (3) years. Providers shall also maintain all advertising for any affiliate, associated person, controlling person, broker or agent including independent contracts and escrow agents. Each advertisement or "invitation to inquire" shall contain a notation clearly stating the name of the individual authorizing the advertisement, the dates the advertisements were printed or published and the manner and extent of distribution of each advertisement. A file containing the information set forth in this section shall be available for inspection by the commissioner.

SOURCES: Laws, 2000, ch. 323, § 8, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in subsections (1)(d), (1)(e), and (2). The word "That" was added at the beginning of subsections (1)(d) and (1)(e). The word "A" was added at the beginning of subsection (2). The Joint Committee ratified the corrections at its May 16, 2002 meeting.

§ 83-7-217. Informed consent; confidentiality of medical information; 15-day right to rescind; death of insured within 15-day period deemed rescission; transfer of proceeds of viatical settlement; post-settlement contacts with insured for purpose of determining health status.

(1) Before the viatical settlement provider enters into a viatical settlement contract, the provider shall obtain:

(a) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind;

(b) A witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily; and

(c) A document in which the insured consents to the release of his or her medical records to a viatical settlement provider or viatical settlement broker.

(2) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information.

(3) All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the contract for at least fifteen (15) calendar days from the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider of all viatical settlement proceeds.

(4) Immediately upon the viatical settlement provider's receipt of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the viatical settlement to an escrow or trust account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The account shall be managed by a trustee or escrow agent independent of the parties to the contract. The trustee or escrow agent shall transfer the proceeds to the viator immediately upon the viatical settlement provider's receipt of acknowledgment of the transfer of the insurance policy.

(5) Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed under Section 83-7-215(1)(f) renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

(6) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider, viatical settlement broker or viatical settlement representative after the viatical settlement has occurred shall be made only by the viatical settlement provider or broker licensed in this state and shall be limited to once every three (3) months for

insureds with a life expectancy of more than one (1) year, and to no more than one (1) per month for insureds with a life expectancy of one (1) year or less. The viatical settlement representative or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into and shall obtain a statement signed by the viator stating that the viator understands these procedures. The limitations set forth in this subsection shall not apply to any contacts with an insured under a viaticated policy for reasons other than determining the insured's health status.

SOURCES: Laws, 2000, ch. 323, § 9, eff from and after July 1, 2000.

§ 83-7-219. Authority of Commissioner to adopt rules and regulations.

The commissioner may:

(a) Promulgate rules and regulations implementing Sections 83-7-201 through 83-7-223;

(b) Establish standards for evaluating reasonableness of payments under viatical settlement contracts. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy;

(c) Establish appropriate licensing requirements, fees and standards for continued licensure for viatical settlement providers, representatives and brokers;

(d) Require a bond or other mechanism for financial accountability for viatical settlement providers; and

(e) Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers, brokers and representatives during the viatication of a life insurance policy or certificate.

SOURCES: Laws, 2000, ch. 323, § 10, eff from and after July 1, 2000.

§ 83-7-221. Violations of provisions considered unfair trade practice.

A violation of Sections 83-7-201 through 83-7-223 shall be considered an unfair trade practice under Section 83-5-29 et seq. and the violator is subject to the penalties therein.

SOURCES: Laws, 2000, ch. 323, § 11, eff from and after July 1, 2000.

§ 83-7-223. Continuation of viatical settlement business pending approval or disapproval of license application filed on or before July 1, 2000.

A viatical settlement provider, viatical settlement representative or viatical settlement broker transacting business in this state may continue to do so pending approval or disapproval of the provider's, representative's or broker's application for a license if the application is filed with the commissioner by July 1, 2000.

SOURCES: Laws, 2000, ch. 323, § 13, eff from and after July 1, 2000.

CHAPTER 9

Accident, Health and Medicare Supplement Insurance

Accident and Health Insurance 83-9-1
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ACCIDENT AND HEALTH INSURANCE

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83-9-36. Process by which prescribing practitioner may request override of restriction on medication restricted for use by insurer step therapy or fail-first protocol; circumstances under which insurer to grant override [Effective January 1, 2012].

§ 83-9-1. Definition of accident and sickness insurance policy.

The term "policy of accident and sickness insurance," as used in Sections 83-9-1 through 83-9-21, includes any individual or group policy or contract of insurance against loss resulting from sickness or from bodily injury, including dental care expenses resulting from sickness or bodily injury, or death by accident, or accidental means, or both.

SOURCES: Codes, 1942, § 5687-01; Laws, 1956, ch. 330, § 1; Laws, 1989, ch. 466, § 2, eff from and after July 1, 1989.

Cross References — Registration and examination of companies writing health and accident insurance, see §§ 83-6-1 et seq.

RESEARCH REFERENCES

Practice References. Business Insurance Law and Practice Guide, (Matthew Bender).

Business Law Monographs, Volume IN2 — Casualty and Liability Insurance (Matthew Bender).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

ALR. What constitutes permanent or total disability within coverage of insurance policy issued to physical laborer or workman. 32 A.L.R.3d 922.

Validity and construction of accident insurance policy provision making benefits conditional on disability occurring immediately, or at once, or within specified time of accident. 39 A.L.R.3d 1026.

Validity and construction of provision in accident insurance policy limiting coverage for death or loss of member to death or loss occurring within specified period after accident. 39 A.L.R.3d 1311.

Validity and construction of prescription drug insurance plans. 42 A.L.R.3d 897.

Conclusiveness of recitation, in delivered insurance policy, that initial premium has been paid. 44 A.L.R.3d 1361.

Medical Care Insurance: right of insured under individual policy to coverage afforded by group policy from which he directly transferred on termination of his employment. 66 A.L.R.3d 1192.

Death during or allegedly resulting from surgery as accidental or from accidental means within coverage of health or accident insurance policy. 91 A.L.R.3d 1042.

Heart attack following exertion or exercise as within terms of accident provision of insurance policy. 1 A.L.R.4th 1319.

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Accident insurance: death or disability incident to partaking of food or drink as within provision as to external, violent, and accidental means. 29 A.L.R.4th 1230.

Construction and application of provision of liability insurance policy expressly excluding injuries intended or expected by insured. 31 A.L.R.4th 957.

Criminal conviction as rendering conduct for which insured convicted within provision of liability insurance policy expressly excluding coverage for damage or injury intended or expected by insured. 35 A.L.R.4th 1063.

Accident or life insurance: death by autoerotic asphyxiation as accidental. 62 A.L.R.4th 823.

Coverage under medical and health insurance plans for services performed by dentist, oral surgeons, and orthodontists. 43 A.L.R.5th 657.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 5-7, 1210.

44 Am. Jur. 2d, Insurance §§ 1218 et seq.

CJS. 44 C.J.S., Insurance §§ 1-3, 21.

45 C.J.S., Insurance §§ 1092, 1259.

§ 83-9-3. Form of policy; commissioner's fees; expedited form and rate review procedure.

(1) No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

(a) The entire money and other considerations therefor are expressed therein; and

(b) The time at which the insurance takes effect and terminates is expressed therein; and

(c) It purports to insure only one (1) person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two (2) or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen (19) years, and any other person dependent upon the policyholder; and

(d) The style, arrangement and overall appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lowercase unspaced alphabet length not less than one-hundred-twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions); and

(e) The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in Section 83-9-5, are printed, at the insurer's option, either with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions," provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

(f) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

(g) It contains no provision purporting to make any portion of the charter, rules, constitution or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

(2) No individual or group policy covering health and accident insurance (including experience-rated insurance contracts, indemnity contracts, self-insured plans and self-funded plans), or any group combinations of these coverages, shall be issued by any commercial insurer doing business in this state which, by the terms of such policy, limits or excludes payment because the individual or group insured is eligible for or is being provided medical

assistance under the Mississippi Medicaid Law. Any such policy provision in violation of this section shall be invalid.

(3) If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may, by ruling, require that such policy meet the standards set forth in subsection (1) of this section and in Section 83-9-5.

(4) The commissioner shall collect and pay into the Special Fund in the State Treasury designated as the "Insurance Department Fund" the following fees for services provided under this section:

FORM	FEE
Each individual policy contract, including revisions	$15.00
Each group master policy or contract, including revisions	15.00
Each rider, endorsement or amendment, etc	10.00
Each insurance application where written application is required and is to be made a part of the policy or contract	10.00
Each questionnaire	7.00
Charge for resubmission where payment is not included with original submission	5.00

Additional charge for tentative approval same as above.

(5) In order to expedite and become more efficient in reviewing and approving accident and health form and rate filings, the commissioner may establish an expedited form and rate review procedure whereby insurers may elect to pay reasonable actuarial fees directly to a department-approved actuarial service in exchange for an expedited review of form and rate filings by the actuarial service. The commissioner may make such reasonable rules and regulations concerning the expedited procedure, and may set reasonable fees for the actuarial services provided. This provision shall not abridge any other authority granted to the commissioner by law, including the authority to collect the filing fees prescribed by this section.

SOURCES: Codes, 1942, § 5687-02; Laws, 1956, ch. 330, § 2; Laws, 1988, ch. 526, § 4; Laws, 1989, ch. 408, § 1; Laws, 1991, ch. 354 § 1; Laws, 1997, ch. 324, § 3; Laws, 2008, ch. 432, § 2, eff from and after July 1, 2008.

Editor's Note — Section 13 of ch. 526, Laws, 1988, provides as follows:

"SECTION 13. The commissioner may, after notice and hearing, issue rules and regulations that he deems necessary to effectuate the purposes of this act or to eliminate devices or plans designed to avoid or render ineffective the provisions of this act. The commissioner may require such information as is reasonably necessary for the enforcement of this act. All rules and regulations adopted and promulgated pursuant to this act shall be subject to the provisions of the Mississippi Administrative Procedures Law as provided in Section 25-43-1 et seq. [now 25-43-1.101 et seq.], Mississippi Code of 1972."

Amendment Notes — The 2008 amendment added (5).

Cross References — Standards for policy provisions for Medicare supplement insurance policies, see § 83-9-103.

RESEARCH REFERENCES

ALR. Person to whom renewal premium may be paid or tendered so as to bind insurer. 42 A.L.R.3d 751.

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

§ 83-9-5. Policy provisions.

(1) **Required provisions.** — Except as provided in subsection (3) of this section, each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section. However, the insurer may, at its option, substitute for one or more of such provisions, corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

As used in this section, the term "insurer" means a health maintenance organization, an insurance company or any other entity responsible for the payment of benefits under a policy or contract of accident and sickness insurance; however, the term "insurer" shall not mean a liquidator, rehabilitator, conservator or receiver or third party administrator of any health maintenance organization, insurance company or other entity responsible for the payment of benefits which is in liquidation, rehabilitation or conservation proceedings, nor shall it mean any responsible guaranty association. Further, no cause of action shall accrue against a liquidator, rehabilitator, conservator or receiver or third-party administrator of any health maintenance organization, insurance company or other entity responsible for the payment of benefits which is in liquidation, rehabilitation or conservation proceedings or any responsible guaranty association under subsection (1)(h)3 of this section or any policy provision in accordance therewith.

(a) A provision as follows:

Entire contract; changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(b) A provision as follows:

Time limit on certain defenses:

1. After two (2) years from the date of issue of this policy, no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

(The foregoing policy provision shall not be so construed as to effect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of subparagraphs (2)(a) and (2)(b) of this section in the event of misstatement with respect to age or occupation.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age fifty (50) or, (2) in the case of a policy issued after age forty-four (44), for at least five (5) years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE":

After this policy has been in force for a period of two (2) years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements in the application.)

2. No claim for loss incurred or disability (as defined in the policy) commencing after two (2) years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(c) A provision as follows:

Grace period:

A grace period of seven (7) days for weekly premium policies, ten (10) days for monthly premium policies and thirty-one (31) days for all other policies will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, "subject to the right of the insurer to cancel in accordance with the cancellation provision hereof."

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision, "unless not less than five (5) days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.")

(d) A provision as follows:

Reinstatement:

If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy. However, if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten (10) days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty (60) days prior to the date of reinstatement. (The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty (50) or, (2) in the case of a policy issued after age forty-four (44), for at least five (5) years from its date of issue.)

(e) A provision as follows:

Notice of claim:

Written notice of claim must be given to the insurer within thirty (30) days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at ____________ (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two (2) years, an insurer may, at its option, insert the following between the first and second sentences of the above provision: "Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two (2) years, he shall, at least once in every six (6) months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six (6) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six (6) months preceding the date on which such notice is actually given.")

(f) A provision as follows:

Claim forms:

The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen (15) days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(g) A provision as follows:

Proofs of loss:

Written proof of loss must be furnished to the insurer at its said office, in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss, within ninety (90) days after the termination of the period for which the insurer is liable, and in case of claim for any other loss, within ninety (90) days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate or reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one (1) year from the time proof is otherwise required.

(h) A provision as follows:

Time of payment of claims:

1. All benefits payable under this policy for any loss, other than loss for which this policy provides any periodic payment, will be paid within twenty-five (25) days after receipt of due written proof of such loss in the form of a clean claim where claims are submitted electronically, and will be paid within thirty-five (35) days after receipt of due written proof of such loss in the form of clean claim where claims are submitted in paper format. Benefits due under the policies and claims are overdue if not paid within twenty-five (25) days or thirty-five (35) days, whichever is applicable, after the insurer receives a clean claim containing necessary medical information and other information essential for the insurer to administer preexisting condition, coordination of benefits and subrogation provisions. A "clean claim" means a claim received by an insurer for adjudication and which requires no further information, adjustment or alteration by the provider of the services or the insured in order to be processed and paid by the insurer. A claim is clean if it has no defect or impropriety, including any lack of substantiating documentation, or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this provision. A clean claim includes resubmitted claims with previously identified deficiencies corrected.

A clean claim does not include any of the following:

a. A duplicate claim, which means an original claim and its duplicate when the duplicate is filed within thirty (30) days of the original claim;

b. Claims which are submitted fraudulently or that are based upon material misrepresentations;

c. Claims that require information essential for the insurer to administer preexisting condition, coordination of benefits or subrogation provisions; or

d. Claims submitted by a provider more than thirty (30) days after the date of service; if the provider does not submit the claim on behalf of the insured, then a claim is not clean when submitted more than thirty (30) days after the date of billing by the provider to the insured.

Not later than twenty-five (25) days after the date the insurer actually receives an electronic claim, the insurer shall pay the appropriate benefit in full, or any portion of the claim that is clean, and notify the provider (where the claim is owed to the provider) or the insured (where the claim is owed to the insured) of the reasons why the claim or portion thereof is not clean and will not be paid and what substantiating documentation and information is required to adjudicate the claim as clean. Not later than thirty-five (35) days after the date the insurer actually receives a paper claim, the insurer shall pay the appropriate benefit in full, or any portion of the claim that is clean, and notify the provider (where the claim is owed to the provider) or the insured (where the claim is owed to the insured) of the reasons why the claim or portion thereof is not clean and will not be paid and what substantiating documentation and information is required to adjudicate the claim as clean. Any claim or portion thereof resubmitted with the supporting documentation and information requested by the insurer shall be paid within twenty (20) days after receipt.

For purposes of this provision, the term "pay" means that the insurer shall either send cash or a cash equivalent by United States mail, or send cash or a cash equivalent by other means such as electronic transfer, in full satisfaction of the appropriate benefit due the provider (where the claim is owed to the provider) or the insured (where the claim is owed to the insured). To calculate the extent to which any benefits are overdue, payment shall be treated as made on the date a draft or other valid instrument was placed in the United States mail to the last known address of the provider (where the claim is owed to the provider) or the insured (where the claim is owed to the insured) in a properly addressed, postpaid envelope, or, if not so posted, or not sent by United States mail, on the date of delivery of payment to the provider or insured.

2. Subject to due written proof of loss, all accrued benefits for loss for which this policy provides periodic payment will be paid ____________ (insert period for payment which must not be less frequently than monthly), and any balance remaining unpaid upon the termination of liability will be paid within thirty (30) days after receipt of due written proof.

3. If the claim is not denied for valid and proper reasons by the end of the applicable time period prescribed in this provision, the insurer must pay the provider (where the claim is owed to the provider) or the insured (where the claim is owed to the insured) interest on accrued benefits at the rate of one and one-half percent (1-½%) per month accruing from the day after payment was due on the amount of the benefits that remain unpaid until the claim is finally settled or adjudicated. Whenever interest due pursuant to this provision is less than One Dollar ($1.00), such amount shall be credited to the account of the person or entity to whom such amount is owed.

4. In the event the insurer fails to pay benefits when due, the person entitled to such benefits may bring action to recover such benefits, any

interest which may accrue as provided in subsection (1)(h)3 of this section and any other damages as may be allowable by law.

(i) A provision as follows:

Payment of claims:

Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured. When payments of benefits are made to an insured directly for medical care or services rendered by a health care provider, the health care provider shall be notified of such payment. The notification requirement shall not apply to a fixed-indemnity policy, a limited benefit health insurance policy, medical payment coverage or personal injury protection coverage in a motor vehicle policy, coverage issued as a supplement to liability insurance or workers' compensation.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer: "If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $________ (insert an amount which must not exceed One Thousand Dollars ($1,000.00)), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment."

"Subject to any written direction of the insured in the application or otherwise, all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person").

(j) A provision as follows:

Physical examinations:

The insurer at his own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder.

(k) A provision as follows:

Legal actions:

No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty (60) days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three (3) years after the time written proof of loss is required to be furnished.

(*l*) A provision as follows:

Change of beneficiary:

Unless the insured makes an irrevocable designation of beneficiary, the right to change the beneficiary is reserved to the insured, and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy, or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(2) **Other provisions.** — Except as provided in subsection (3) of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section. However, the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

(a) A provision as follows:

Change of occupation:

If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the most recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable, or prior to date of proof of change in occupation, with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

(b) A provision as follows:

Misstatement of age:

If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(c) A provision as follows:

Relation of earnings to issuance:

If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two (2) years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two (2) years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of Two Hundred Dollars ($200.00) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty (50) or, (2) in the case of a policy issued after age forty-four (44), for at least five (5) years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulations by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner, or any combination of such coverages. In the absence of such definition, such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations).

(d) A provision as follows:

Unpaid premium:

Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(e) A provision as follows:

Cancellation:

The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five (5) days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term, the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(f) A provision as follows:

Conformity with state statutes:

Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

(g) A provision as follows:

Illegal occupation:

The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(h) A provision as follows:

Intoxicants and narcotics:

The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

(3) **Inapplicable or inconsistent provisions.** — If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(4) **Order of certain policy provisions.** — The provisions which are the subject of subsections (1) and (2) of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse or likely to mislead a person to whom the policy is offered, delivered or issued.

(5) **Third-party ownership.** — The word "insured," as used in Sections 83-9-1 through 83-9-21, Mississippi Code of 1972, shall not be construed as preventing a person other than the insured with a proper insurable interest

from making application for and owning a policy covering the insured, or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

(6) **Requirements of other jurisdictions.** —

(a) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of Sections 83-9-1 through 83-9-21, Mississippi Code of 1972, and which is prescribed or required by the law of the state under which the insurer is organized.

(b) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

(7) **Filing procedure.** — The commissioner may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to the cited sections as are necessary, proper or advisable to the administration of said sections. This provision shall not abridge any other authority granted the commissioner by law.

(8) **Administrative penalties.** —

(a) If the commissioner finds that an insurer, during any calendar year, has paid at least eighty-five percent (85%), but less than ninety-five percent (95%), of all clean claims received from all providers during that year in accordance with the provisions of subsection (1)(h) of this section, the commissioner may levy an aggregate penalty in an amount not to exceed Ten Thousand Dollars ($10,000.00). If the commissioner finds that an insurer, during any calendar year, has paid at least fifty percent (50%), but less than eighty-five percent (85%), of all clean claims received from all providers during that year in accordance with the provision of subsection (1)(h) of this section, the commissioner may levy an aggregate penalty in an amount of not less than Ten Thousand Dollars ($10,000.00) nor more than One Hundred Thousand Dollars ($100,000.00). If the commissioner finds that an insurer, during any calendar year, has paid less than fifty percent (50%) of all clean claims received from all providers during that year in accordance with the provisions of subsection (1)(h) of this section, the commissioner may levy an aggregate penalty in an amount not less than One Hundred Thousand Dollars ($100,000.00) nor more than Two Hundred Thousand Dollars ($200,000.00). In determining the amount of any fine, the commissioner shall take into account whether the failure to achieve the standards in subsection (1)(h) of this section were due to circumstances beyond the control of the insurer. The insurer may request an administrative hearing to contest the assessment of any administrative penalty imposed by the commissioner pursuant to this subsection within thirty (30) days after receipt of the notice of assessment.

(b) Examinations to determine compliance with subsection (1)(h) of this section may be conducted by the commissioner or any of his examiners. The commissioner may contract with qualified impartial outside sources to assist in examinations to determine compliance. The expenses of any such examinations shall be paid by the insurer examined.

(c) Nothing in the provisions of subsection (1)(h) of this section shall require an insurer to pay claims that are not covered under the terms of a contract or policy of accident and sickness insurance.

(d) An insurer and a provider may enter into an express written agreement containing timely claim payment provisions which differ from, but are at least as stringent as, the provisions set forth under subsection (1)(h) of this section, and in such case, the provisions of the written agreement shall govern the timely payment of claims by the insurer to the provider. If the express written agreement is silent as to any interest penalty where claims are not paid in accordance with the agreement, the interest penalty provision of subsection (1)(h)3 of this section shall apply.

(e) The commissioner may adopt rules and regulations necessary to ensure compliance with this subsection.

SOURCES: Codes, 1942, § 5687-03; Laws, 1956, ch. 330, § 3; Laws, 1989, ch. 466, § 1; Laws, 1991, ch. 474, § 2; Laws, 2002, ch. 575, § 1, eff from and after Jan. 1, 2003.

Cross References — Coverage of alcoholism care and treatment, see §§ 83-9-27 et seq.

Provisions for coverage of newly born children, see § 83-9-33.

Standards for policy provisions for Medicare supplement insurance policies, see § 83-9-103.

Insured's right to reimbursement for services of a licensed psychologist notwithstanding any contrary provision in a policy, plan, or contract, see § 83-41-211.

Insured's right to reimbursement for services of chiropractor and freedom of choice as to practitioner and location of services, see § 83-41-215.

JUDICIAL DECISIONS

1. In general.
2. Time limit on certain defenses.
3. Illegal occupation.
4. Statute of limitation.

1. In general.

Once someone who possesses uninsured motorist coverage knows, or reasonably should know, that the damages claimed to have been suffered exceed the limits of insurance available to the alleged tortfeasor, the cause of action against the uninsured motorist carrier has accrued, and it is at this point in time that a potential plaintiff has a legally enforceable claim against the uninsured motorist carrier. Jackson v. State Farm Mut. Auto. Ins. Co., 852 So. 2d 641 (Miss. Ct. App. 2003).

Insurer that issued health insurance policy to insured approximately 6 years before insured lost his hearing as complication of meningitis was not required to cover surgery to restore insured's hearing because his meningitis first manifested itself almost 30 years prior to issuance of insurance policy, well beyond incontestability provision period. Neville v. American Republic Ins. Co., 912 F.2d 813 (5th Cir. 1990).

A health insurance policy exclusion for "congenital conditions" did not apply where the insured's congenital heart condition in no way manifested itself to her prior to the effective date of coverage. State (Comprehensive Health Plan) v. Carper, 545 So. 2d 1 (Miss. 1989).

Major medical insurance or accident and health insurance is exempt from Mississippi Insurance Guaranty Association insolvency coverage. Mississippi Ins.

Guar. Ass'n v. Vaughn, 529 So. 2d 540 (Miss. 1988).

Whether insurer acts within rights under exclusionary provisions of health insurance policy in denying claim or acts in bad faith in denying claim is factual question to be presented to jury. Blue Cross & Blue Shield, Inc. v. Campbell, 466 So. 2d 833 (Miss. 1984).

In an action against a life insurer seeking recovery of double indemnity benefits that was filed more than four years subsequent to accrual of the claim, the trial court erred in concluding that the suit was barred by the three year statute of limitations governing accident and health insurance; although the policy, which was issued in connection with decedent's employment, was delivered to the insured rather than a master policy to the employer with a certificate to the employee, this fact did not remove the policy from the group insurance class or convert it to an individual plan; as a group policy, it was specifically exempted from the three-year statute of limitations and was controlled instead by the six-year statute of limitations. Williams v. Life Ins. Co., 367 So. 2d 922 (Miss. 1979).

To be effective, a requirement that an accident insurance policy must be delivered during the life and good health of the insured if it is to obligate the insurer, must, under ¶ (1) of subd (A) [now (1)(a)] of this section, [Code 1942, § 5687-03] be contained in the policy itself or attached to the policy as a part of the contract of insurance. Prudence Mut. Cas. Co. v. Switzer, 253 Miss. 143, 175 So. 2d 476, 19 A.L.R.3d 946 (1965).

This section [Code 1942, § 5687-03] does not authorize the cancellation of a policy before the due date of a premium which the insurer has agreed by the terms of the policy to waive. Benefit Trust Life Ins. Co. v. Lee, 248 Miss. 715, 160 So. 2d 909 (1964).

2. Time limit on certain defenses.

Where the insured fell, was injured, and became totally disabled more than 2 years after the effective date of an accident and health policy, the fact that it was represented incorrectly in the application for the policy that insured had never been treated for or told that he had rheumatism, arthritis, lumbago, sciatica, sacroiliac disorder, or lame back did not constitute a defense to insurer's performance of the contract, in view of the provisions of subsection (A)(2)(b) [now (1)(b)2] of this section [Code 1942, § 5687-03]. Prudence Life Ins. Co. v. Smith, 197 So. 2d 799 (Miss. 1967).

The time of commencement of a disease and the time of commencement of disability resulting from the disease are not necessarily the same. Jefferson Std. Life Ins. Co. v. O'Bryan, 192 So. 2d 263 (Miss. 1966).

Under the provisions of ¶ (2) of subd (A) [now (1)(b)] of this section [Code 1942, § 5687-03] an insured who contracted multiple sclerosis at least a year prior to the date of issuance of a health and accident policy, but did not become disabled as a consequence until more than two years after the date of issuance, was entitled to recover, for at the time the disability occurred the policy was incontestable. Jefferson Std. Life Ins. Co. v. O'Bryan, 192 So. 2d 263 (Miss. 1966).

3. Illegal occupation.

In an action on a major medical policy which precluded recovery for care furnished the insured injured while participating in an assault or a felony, an instruction that if the jury should find that the insured, who was hospitalized after being shot while attempting to make a citizen's arrest for a traffic offense, arrested or pursued another for the purpose of arresting without a warrant for an indictable offense or a breach of the peace threatened or attempted in his presence, it would be the jury's duty to return a verdict for the insured, was erroneous where it appeared from the evidence that the insured thought of making a citizen's arrest only after he had failed to find the sheriff and after any traffic offense had long been completed by the victim. Protective Life Ins. Co. v. Spears, 231 So. 2d 510 (Miss. 1970).

4. Statute of limitation.

Miss. Code. Ann. § 83-9-5 requires insurers to include certain provisions in their contracts; it does not create a separate right outside the agreements made by the parties. Thus the required language in insurance contracts allows a suit to be brought at any period within three years of the time that proof of loss is required. Hood v. Cent. United Life Ins. Co., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 92120 (N.D. Miss. Sept. 30, 2009).

Grant of summary judgment against the insureds was proper where their claim against the insurer after the driver insured was injured in an accident was proper under Miss. Code Ann. 83-9-5(k) because the insureds were aware of the shortfall in coverage under the tortfeasor's own policy more than three years before they joined the insurer in the litigation. Jackson v. State Farm Mut. Auto. Ins. Co., 880 So. 2d 336 (Miss. 2004).

ATTORNEY GENERAL OPINIONS

The provisions of Title 83, including Sections 83-9-5 and 83-9-32, which are placed squarely within the jurisdiction of the Department of Insurance, are not applicable to the State and School Employees Health Insurance Plan, which is clearly under the administration of the State and School Employees Health Insurance Management Board under the umbrella of the Department of Finance and Administration. Martinson, Dec. 6, 2002, A.G. Op. #02-0668.

The State and School Employees Health Insurance Plan is not governed by ERISA. Martinson, Dec. 6, 2002, A.G. Op. #02-0668.

RESEARCH REFERENCES

Practice References. Business Law Monographs, Volume IN2 — Casualty and Liability Insurance (Matthew Bender).

ALR. Validity, construction, and effect of provisions, in insurance policies allowing disability or accident benefits, which require insured to submit to physical examination. 5 A.L.R.3d 929.

Construction of incontestable clause applicable to disability insurance. 13 A.L.R.3d 1383.

Suicide clause of life or accident insurance as affected by incontestable clause. 37 A.L.R.3d 337.

Death or injury from taking illegal drugs or narcotics as accidental or result of accidental means within insurance coverage. 41 A.L.R.3d 654.

Liability under life or accident policy not containing a "violation of the law" clause, for death or injury resulting from violation of law by insured. 43 A.L.R.3d 1120.

Life or accident insurance: Sufficiency of showing that death from drowning was due to accident or accidental means. 43 A.L.R.3d 1168.

What constitutes a "hospital" within coverage or exclusionary clauses of hospitalization policy. 46 A.L.R.3d 1244.

Liability insurance: timeliness of notice of accident by additional insured. 47 A.L.R.3d 199.

What is "conveyance," "passenger conveyance" or "public conveyance" within coverage of accident policy. 60 A.L.R.3d 858.

Who is "fare-paying passenger" within coverage provision of life or accident insurance policy. 60 A.L.R.3d 1273.

What conditions constitute "disease" within terms of life, accident, disability, or hospitalization insurance policy. 61 A.L.R.3d 822.

What constitutes "one accident" or "one sickness" or related conditions or recurrences within provisions of health, accident, and disability insurance. 61 A.L.R.3d 884.

Elimination of particular coverage, or termination, of health, hospitalization, or medical care insurance policy as affecting insurer's liability for insured's continuing hospitalization or medical expenses relating to previously covered illness. 66 A.L.R.3d 1205.

Construction and application of provision in health or hospitalization policy excluding or postponing coverage of illness for which medical care or treatment was received within stated time preceding or following issuance of policy. 95 A.L.R.3d 1290.

Accident insurance: death or disability incident to partaking of food or drink as within provision as to external, violent, and accidental means. 29 A.L.R.4th 1230.

Modern status of rules requiring liability insurer to show prejudice to escape liability because of insured's failure or delay in giving notice of accident or claim, or in forwarding suit papers. 32 A.L.R.4th 141.

Accident insurance: what is "loss" of body member. 51 A.L.R.4th 156.

What constitutes single accident or occurrence within liability policy limiting insurer's liability to a specified amount per accident or occurrence. 64 A.L.R.4th 668.

Theft and vandalism insurance: coinsured's misconduct as barring innocent coinsured's right to recover on policy. 64 A.L.R.4th 714.

Insurer's duty, and effect of its failure, to provide insured or payee with copy of policy or other adequate documentation of its terms. 78 A.L.R.4th 9.

Coverage under medical and health insurance plans for services performed by dentist, oral surgeons, and orthodontists. 43 A.L.R.5th 657.

Excessiveness or adequacy of damages awarded for injuries to nerves or nervous system. 51 A.L.R.5th 467.

Excessiveness or adequacy of damages awarded for injuries causing mental or psychological damages. 52 A.L.R.5th 1.

Construction of incontestable clause applicable to disability insurance. 67 A.L.R.5th 513.

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

14A Am. Jur. Pl & Pr Forms, Rev, Insurance, Form 213.1.

§ 83-9-6. Freedom of consumer choice for pharmacy under certain health insurance.

(1) This section shall apply to all health benefit plans providing pharmaceutical services benefits, including prescription drugs, to any resident of Mississippi. This section shall also apply to insurance companies and health maintenance organizations that provide or administer coverages and benefits for prescription drugs. This section shall not apply to any entity that has its own facility, employs or contracts with physicians, pharmacists, nurses and other health care personnel, and that dispenses prescription drugs from its own pharmacy to its employees and dependents enrolled in its health benefit plan; but this section shall apply to an entity otherwise excluded that contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and services.

(2) As used in this section:

(a) "Copayment" means a type of cost sharing whereby insured or covered persons pay a specified predetermined amount per unit of service with their insurer paying the remainder of the charge. The copayment is incurred at the time the service is used. The copayment may be a fixed or variable amount.

(b) "Contract provider" means a pharmacy granted the right to provide prescription drugs and pharmacy services according to the terms of the insurer.

(c) "Health benefit plan" means any entity or program that provides reimbursement for pharmaceutical services.

(d) "Insurer" means any entity that provides or offers a health benefit plan.

(e) "Pharmacist" means a pharmacist licensed by the Mississippi State Board of Pharmacy.

(f) "Pharmacy" means a place licensed by the Mississippi State Board of Pharmacy.

(3) A health insurance plan, policy, employee benefit plan or health maintenance organization may not:

(a) Prohibit or limit any person who is a participant or beneficiary of the policy or plan from selecting a pharmacy or pharmacist of his choice who has agreed to participate in the plan according to the terms offered by the insurer;

(b) Deny a pharmacy or pharmacist the right to participate as a contract provider under the policy or plan if the pharmacy or pharmacist agrees to provide pharmacy services, including but not limited to prescription drugs, that meet the terms and requirements set forth by the insurer under the policy or plan and agrees to the terms of reimbursement set forth by the insurer;

(c) Impose upon a beneficiary of pharmacy services under a health benefit plan any copayment, fee or condition that is not equally imposed upon all beneficiaries in the same benefit category, class or copayment level under the health benefit plan when receiving services from a contract provider;

(d) Impose a monetary advantage or penalty under a health benefit plan that would affect a beneficiary's choice among those pharmacies or pharmacists who have agreed to participate in the plan according to the terms offered by the insurer. Monetary advantage or penalty includes higher copayment, a reduction in reimbursement for services, or promotion of one participating pharmacy over another by these methods;

(e) Reduce allowable reimbursement for pharmacy services to a beneficiary under a health benefit plan because the beneficiary selects a pharmacy of his or her choice, so long as that pharmacy has enrolled with the health benefit plan under the terms offered to all pharmacies in the plan coverage area;

(f) Require a beneficiary, as a condition of payment or reimbursement, to purchase pharmacy services, including prescription drugs, exclusively through a mail-order pharmacy; or

(g) Impose upon a beneficiary any copayment, amount of reimbursement, number of days of a drug supply for which reimbursement will be allowed, or any other payment or condition relating to purchasing pharmacy services from any pharmacy, including prescription drugs, that is more costly or more restrictive than that which would be imposed upon the beneficiary if such services were purchased from a mail-order pharmacy or any other pharmacy that is willing to provide the same services or products for the same cost and copayment as any mail order service.

(4) A pharmacy, by or through a pharmacist acting on its behalf as its employee, agent or owner, may not waive, discount, rebate or distort a copayment of any insurer, policy or plan or a beneficiary's coinsurance portion

of a prescription drug coverage or reimbursement and if a pharmacy, by or through a pharmacist's acting on its behalf as its employee, agent or owner, provides a pharmacy service to an enrollee of a health benefit plan that meets the terms and requirements of the insurer under a health benefit plan, the pharmacy shall provide its pharmacy services to all enrollees of that health benefit plan on the same terms and requirements of the insurer. A violation of this subsection shall be a violation of the Pharmacy Practice Act subjecting the pharmacist as a licensee to disciplinary authority of the State Board of Pharmacy.

(5) If a health benefit plan providing reimbursement to Mississippi residents for prescription drugs restricts pharmacy participation, the entity providing the health benefit plan shall notify, in writing, all pharmacies within the geographical coverage area of the health benefit plan, and offer to the pharmacies the opportunity to participate in the health benefit plan at least sixty (60) days before the effective date of the plan or before July 1, 1995, whichever comes first. All pharmacies in the geographical coverage area of the plan shall be eligible to participate under identical reimbursement terms for providing pharmacy services, including prescription drugs. The entity providing the health benefit plan shall, through reasonable means, on a timely basis and on regular intervals, inform the beneficiaries of the plan of the names and locations of pharmacies that are participating in the plan as providers of pharmacy services and prescription drugs. Additionally, participating pharmacies shall be entitled to announce their participation to their customers through a means acceptable to the pharmacy and the entity providing the health benefit plans. The pharmacy notification provisions of this section shall not apply when an individual or group is enrolled, but when the plan enters a particular county of the state.

(6) A violation of this section creates a civil cause of action for injunctive relief in favor of any person or pharmacy aggrieved by the violation.

(7) The Commissioner of Insurance shall not approve any health benefit plan providing pharmaceutical services which does not conform to this section.

(8) Any provision in a health benefit plan which is executed, delivered or renewed, or otherwise contracted for in this state that is contrary to this section shall, to the extent of the conflict, be void.

(9) It is a violation of this section for any insurer or any person to provide any health benefit plan providing for pharmaceutical services to residents of this state that does not conform to this section.

SOURCES: Laws, 1994, ch. 475, § 1; Laws, 1997, ch. 321, § 1, eff from and after July 1, 1997.

Cross References — Freedom of choice of pharmacy providers for patients in long-term care facilities, see § 43-11-1.

Mississippi Pharmacy Practice Act, see §§ 73-21-71 through 73-21-129.

§ 83-9-6.1. Pharmacy cash discount cards; cannot be issued unless issuer pays portion of discount given by pharmacy.

(1) As used in this section:

(a) "Cash discount card" means a card, other than the program identification card of a member or participant of a prescription drug program, that allows the holder to obtain a discount on a prescription drug when paying for the prescription at the point-of-sale.

(b) "Prescription drug program" means a program or plan that provides coverages and benefits for prescription drugs for members or participants in the program, whether the program is a separate program or part of a health benefit plan.

(2) Any entity that administers a prescription drug program through a network of participating pharmacies for the benefit of any resident of the State of Mississippi shall not issue or distribute any cash discount card that the participating pharmacies must accept or honor as a condition or requirement of participation in the prescription drug program, or that the participating pharmacies must accept or honor if they accept or honor program identification cards held by members or participants of any prescription drug program administered by the entity, unless the entity pays a portion of the cost of the discount given by the pharmacy for prescriptions purchased with the use of the cash discount card.

(3) Any person or entity that is not subject to subsection (2) of this section shall not issue or distribute any cash discount card to any resident of the State of Mississippi unless the person or entity pays a portion of the cost of the discount given by the pharmacy for prescriptions purchased with the use of the cash discount card.

(4) Any provision in any prescription drug program or health benefit plan that is executed, delivered, renewed or otherwise contracted for in this state that is not in compliance with this section shall be void to the extent of the noncompliance.

(5) The provisions of this section shall not apply to the issuers of Medicare Supplement Insurance policies.

(6) The Office of Attorney General, Consumer Protection Division, shall enforce the provisions of this section.

SOURCES: Laws, 1999, ch. 545, § 1, eff from and after July 1, 1999.

§ 83-9-6.2. Uniform prescription identification.

(1) Every health benefit plan that provides coverage for prescription drugs or devices, or that administers such a plan, including, but not limited to, health maintenance organizations and third party administrators for self-insured plans, shall issue to each insured a card or other technology containing standardized pharmacy benefit identification information. The card shall contain at a minimum the following information:

(a) The card issuer's name or logo on the front of the card;

(b) The cardholder's name and identification number, which shall be displayed on the front side of the card;

(c) The American National Standards Institute Issuer Identification Number assigned to the administrator or pharmacy benefit manager of the plan, when required for proper claims adjudication;

(d) The processor's control number, when required for proper claims adjudication;

(e) The insured's group number, when required for proper claims adjudication;

(f) The name and address of the benefits administrator or other entity responsible for prescription claims submission, adjudication or pharmacy provider correspondence for prescription benefits; and

(g) A help desk telephone number that pharmacy providers may call for pharmacy benefit claims assistance.

(2) This section does not require a health benefit plan to issue an identification card separate from any identification card issued to an enrollee to evidence coverage under the health benefit plan if the identification card contains the elements required by subsection (1) of this section.

(3) In order to ensure that insurance identification cards issued under this section contain accurate and updated information, each health benefit plan shall provide each subscriber with a new insurance identification card within a reasonable time after any information required for proper claims adjudication is changed.

(4) As used in this section, "health benefit plan" means any hospital or medical policy or certificate, hospital or medical service contract or health maintenance organization, a plan provided by a fully insured multiple employer welfare arrangement or any other entity providing a plan of health insurance subject to the jurisdiction of the Commissioner of Insurance and to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by the Health Insurance Portability and Accountability Act of 1996. A health benefit plan does not include the following:

(a) Accident;

(b) Credit;

(c) Disability income;

(d) Long-term or nursing home care;

(e) Specified disease;

(f) Dental or vision;

(g) Coverage issued as a supplement to liability insurance;

(h) Medical payments under automobile or homeowners;

(i) Insurance under which benefits are payable with or without regard to fault and that is required statutorily to be contained in any liability or equivalent self-insurance; and

(j) Hospital income or indemnity.

(5) The Commissioner of Insurance may issue any rules or regulations necessary to implement the provisions of this section, and he may use the standards produced by the National Council for Prescription Drugs Programs as a guide in developing such rules and regulations.

(6) This section applies to plans that are delivered, issued for delivery or renewed on or after January 1, 2003. For purposes of this section, renewal of a health benefit policy, contract or plan is presumed to occur on the anniversary date.

SOURCES: Laws, 2002, ch. 589, § 1, eff from and after Jan. 1, 2003.

Federal Aspects — Employee Retirement Income Security Act of 1974, see 29 USCS Section 1001 et seq.

Health Insurance Portability and Accountability Act of 1996, see 42 USCS §§ 300gg et seq.

§ 83-9-7. Benefits to patients in tax-supported institutions.

No policy of sickness and accident insurance delivered or issued for deliverance after August 6, 1968, to any person in this state, including both individual policies and group policies, which provide coverage for tuberculosis or mental illness or any other illness, shall exclude hospitalization benefits for such patients hospitalized in tax-supported institutions of the State of Mississippi or any county or municipality thereof, whether such institution be deemed charitable or otherwise. However, only that portion or percent of the benefits shall be payable that have been assigned to said eleemosynary institution as payment in whole or in part for services rendered by such institution.

SOURCES: Codes, 1942, § 5687-03.5; Laws, 1968, ch. 476, § 1, eff from and after passage (approved August 6, 1968).

§ 83-9-8. Coverage of drugs not approved by Federal Food and Drug Administration; drugs used in treatment of cancer.

(1) No insurance policy which provides coverage for drugs shall exclude coverage of any such drug used for the treatment of cancer on the grounds that the drug has not been approved by the Federal Food and Drug Administration for the treatment of the specific type of cancer for which the drug has been prescribed, provided that such drug is recognized for treatment of that specific type of cancer in one of the standard reference compendia or in the medical literature.

(2) This section may not be construed to:

(a) Alter existing law with regard to provisions limiting the coverage of drugs that have not been approved by the Federal Food and Drug Administration;

(b) Require coverage for any drug when the Federal Food and Drug Administration has determined its use to be contraindicated;

(c) Require coverage for experimental drugs not otherwise approved for any indication by the Federal Food and Drug Administration;

(d) Create, impair, alter, limit, modify, enlarge, abrogate or prohibit reimbursement for drugs used in the treatment of any other disease or condition.

(3) For purposes of this section:

(a) "Insurance policy" means an individual, group or blanket policy written by a medical expense indemnity corporation, a hospital service corporation, a health care service plan contract, or a private insurance plan issued, amended, delivered or renewed in this state or which provides insurance for residents of this state. This term shall include all health insurance plans for the state and its political subdivisions.

(b) "Standard reference compendia" means:

(i) The United States Pharmacopoeia Drug Information;

(ii) The American Hospital Formulary Service Drug Information.

(c) "Medical literature" means two (2) articles from major peer-reviewed professional medical journals that have recognized, based on scientific or medical criteria, the drug's safety and effectiveness for treatment of the indication for which it has been prescribed unless two (2) articles from major peer-reviewed professional medical journals have concluded, based on scientific or medical criteria, that the drug is unsafe or ineffective or that the drug safety and effectiveness cannot be determined for the treatment of the indication for which it has been prescribed. Peer-reviewed medical literature shall not include publications or supplements that are sponsored to a significant extent by a pharmaceutical manufacturing company or health carrier.

SOURCES: Laws, 1997, ch. 445, § 1, eff from and after July 1, 1997.

§ 83-9-9. Conforming to statute.

(1) **Other policy provisions.** — No policy provision which is not subject to Section 83-9-5 shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to Sections 83-9-1 through 83-9-21.

(2) **Policy conflicting with this statute.** — A policy delivered or issued for delivery to any person in this state in violation of Sections 83-9-1 through 83-9-21 shall be held valid but shall be construed as provided in said sections. When any provision in a policy subject to the cited sections is in conflict with any provision of said sections, the rights, duties, and obligations of the insurer, the insured, and the beneficiary shall be governed by the provisions of such sections.

SOURCES: Codes, 1942, § 5687-04; Laws, 1956, ch. 330, § 4, eff July 1, 1956.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

§ 83-9-11. Application.

(1) The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within fifteen (15) days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

(2) No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

(3) The falsity of any statement in the application for any policy covered by Sections 83-9-1 through 83-9-21 may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

SOURCES: Codes, 1942, § 5687-05; Laws, 1956, ch. 330, § 5, eff July 1, 1956.

JUDICIAL DECISIONS

1. In general.

Summary judgment was improperly granted to the insurer where the decedent's promise not to travel out of Mississippi in her rental car was akin to a false statement regarding health. Hancock v. Mid Am. Ins. Servs., 836 So. 2d 762 (Miss. 2003).

False statements made by decedent in his application for life insurance (denying his recent hospitalization for chemical dependency, cocaine use, and consultation with physician) constituted "material" misrepresentations, justifying insurer's post claim rescission of policy under § 83-9-11(3). Wesley v. Union Nat'l Life, 919 F. Supp. 232 (S.D. Miss. 1995).

Insurer did not engage in post claim underwriting when it rescinded life insurance policy under § 83-9-11(3) on learning that insured had made material misrepresentations in his policy application concerning his recent hospitalization, his cocaine use, and consultation with physician; rather, it was insured who bypassed insurer's underwriting process. Wesley v. Union Nat'l Life, 919 F. Supp. 232 (S.D. Miss. 1995).

Right of insurer to void or rescind policy occurs only when answers given in application are both false and material to acceptance of risk or hazard to be assumed; if misstatement is material, it can make no difference whether or not it was made in good faith. Massachusetts Mut. Life Ins. Co. v. Nicholson, 775 F. Supp. 954 (N.D. Miss. 1991).

Insured's response on insurance application indicating that she and her husband had never been denied issuance or renewal of auto insurance coverage, when in fact renewal had been denied on a previous occasion, raised question of fact as to whether statement on policy was material misrepresentation which would permit insurer to rescind policy based on discrepancy in statements as to reason for previous nonrenewal of policy. Chapman v. Safeco Ins. Co. of Am., 722 F. Supp. 285 (N.D. Miss. 1989).

Insured is not bound by misrepresentations, if any, in telephone interview with representative of insurance company, where insured testified that she was not asked question concerning treatment within 10 years during telephone interview, and examination of form shows that "answer" recorded thereon contradicts answers to earlier questions. Guy v. Commonwealth Life Ins. Co., 698 F. Supp. 1305 (N.D. Miss. 1988), aff'd in part, rev'd on other grounds, 894 F.2d 1407 (5th Cir. 1990), reh'g denied (5th Cir. 1990).

Even if failure to reveal doctors who had treated wife insured other than listed doctor, and failure of husband insured to list family physician, was misrepresentation, information was not material to risk being assumed, and therefore insurance company was not entitled to rescind policy. Mattox v. Western Fid. Ins. Co., 694 F. Supp. 210 (N.D. Miss. 1988).

To entitle insurer to rescind policy, alleged misrepresentations made must affect either acceptance of risk or hazard assumed by company; where insurance company's chief underwriter stated that lack of any family physician information on husband did not affect acceptance of major medical policy application for husband and wife, company could not complain after submission of claim that applicants' failure to disclose names of more then one physician for wife was material misrepresentation entitling company to rescind policy; if applicant divulges information, but agent who fills out form does not record information accurately, there has been no misrepresentation, and fact that applicant signed application and initialed each entry which company claims were misrepresentations is of no affect because signing of completed application by insured does not undo fact that insured has communicated information to agent; by issuing policy and accepting premiums with full knowledge that applicant was being treated for high blood pressure and that this information did not appear on application, insurance company waived right to rescind policy for that "misrepresentation"; uninsurability alone is not grounds for rescission of policy, and although company has right to rely on information supplied in application in determining whether or not to accept risk, company has no right to rescind policy because there was information, not asked for on application and not volunteered by applicant, knowledge of which would have caused company to refuse to insure. Mattox v. Western Fid. Ins. Co., 694 F. Supp. 210 (N.D. Miss. 1988).

Because insurer is not required to show intent to deceive in order to void policy based on misrepresentations in application, insured's good faith is irrelevant. Pedersen v. Chrysler Life Ins. Co., 677 F. Supp. 472 (N.D. Miss. 1988).

Insurer proved existence of misrepresentation by clear and convincing evidence where insured stated on application that he had not seen physician for treatment of heart trouble in 6 month period preceding effective date of policy, but insured's wife did not contest fact that her husband was being treated for heart trouble in that period. Pedersen v. Chrysler Life Ins. Co., 677 F. Supp. 472 (N.D. Miss. 1988).

Insurer met its burden with regard to element of materiality where manager of claims department stated that insurer relied on health representations made by customers when applying for insurance, insurer did not issue life insurance policy if applicant had been treated for heart failure within 6 months prior to date of application, and had insurer known of insured's medical history, it would not have issued policy. Pedersen v. Chrysler Life Ins. Co., 677 F. Supp. 472 (N.D. Miss. 1988).

The materiality of a representation on an insurance application is determined by the probable and reasonable effect which truthful answers would have had on the insurer. Sanford v. Federated Guar. Ins. Co., 522 So. 2d 214 (Miss. 1988).

Where an insurance policy contradicted itself as to whether answers in the application were "warranties" or mere "representations," they were required to be construed as representations. Sanford v. Federated Guar. Ins. Co., 522 So. 2d 214 (Miss. 1988).

In an insured's action to recover under a hospitalization policy, and to recover punitive damages for the insurer's failure to pay the insured's claim under the policy, a jury question was made out as to whether the insured made false statements on the policy application that would permit the insurer to cancel the policy months later, after the claim was made, pursuant to § 83-9-11(3), and as to whether the insurer had a legitimate and arguable reason to prevail in its affirmative defense that the answers given by the insured on the policy application were materially false to the extent that the policy could be arbitrarily voided ab initio under § 83-9-11(3). Reserve Life Ins. Co. v. McGee, 444 So. 2d 803 (Miss. 1983).

The provisions of subd (C) [now (3)] of this section [Code 1942, § 5687-05], are applicable to the situation where the insured, although signing applications for policies in blank, gained knowledge of errors and insufficiencies in the applications when the policies were delivered. Reserve Life Ins. Co. v. Brunson, 252 Miss. 20, 172 So. 2d 571 (1965).

The question of whether the misrepresentations of an insured as to her medical history materially affected either the insurer's acceptance of the risk or the hazard it assumed is one for the jury. Reserve Life Ins. Co. v. Brunson, 252 Miss. 20, 172 So. 2d 571 (1965).

An insurer who relied upon the false statements of the insured as materially affecting the acceptance of the risk or the hazard assumed has the burden of going forward with the proof as to this issue. Reserve Life Ins. Co. v. Brunson, 252 Miss. 20, 172 So. 2d 571 (1965).

RESEARCH REFERENCES

ALR. Insurer's duty, and effect of its failure, to provide insured or payee with copy of policy or other adequate documentation of its terms. 78 A.L.R.4th 9.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 313-319.

14A Am. Jur. Pl & Pr Forms, Rev, Insurance, Form 213.1.

3 Am. Jur. Proof of Facts 3d 367, Materiality of Applicant's Misrepresentation in Application for Life or Health Insurance.

CJS. 44 C.J.S., Insurance §§ 403, 428-431.

§ 83-9-13. Waiver; proof-of-loss form; revision of form.

(1) The acknowledgment by any insurer of the receipt of notice given under any policy covered by Sections 83-9-1 through 83-9-21, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder, shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

(2) The Commissioner of Insurance shall prescribe the use of the National Uniform Bill-82 (UB-82) and the Health Care Financing Administration (HCFA) Form 1500 as the uniform proof of loss forms. After July 1, 1985, no insurance company writing policies of accident and sickness insurance may require proof of loss to be on any claim form but the UB-82 or HCFA Form 1500, whichever is appropriate for services rendered.

(3) The Commissioner of Insurance shall review the uniform proof of loss forms prescribed under subsection (2), seek comments and suggestions from insurers and consumer groups about proposed improvements to the forms, and determine whether any revisions should be made to either form that would simplify or otherwise improve the form. If the commissioner determines that either form should be revised, he shall make the revisions to the form and

prescribe the use of the revised form by all insurance companies writing policies of accident and sickness insurance in Mississippi. After six (6) months from the date that the commissioner has prescribed the use of any revised form, no insurance company writing policies of accident and sickness insurance may require proof of loss to be on any claim form but the revised form when that is the appropriate form for services rendered.

SOURCES: Codes;, 1942, § 5687-06; Laws, 1956, ch. 330, § 6; Laws, 1971, ch. 419, § 1; Laws, 1974, ch. 397; Laws, 1985, ch. 370; Laws, 1993, ch. 336, § 1, eff from and after July 1, 1993.

JUDICIAL DECISIONS

1. In general.

The fact that an insurer under a hospital services policy had paid on a claim of cancer, prior to the effective date of a revised catastrophic illness indorsement, did not waive the rights of the insurer under a clause of the indorsement which provided that no benefits were to accrue thereunder on account of cancer in a case where the patient had had cancer before the effective date of the indorsement. Mississippi Hosp. & Medical Serv. v. Lumpkin, 229 So. 2d 573 (Miss. 1969).

RESEARCH REFERENCES

Am Jur. 44 Am. Jur. 2d, Insurance §§ 1444 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Insurance, Form No. 332 (answer in action by trustee that beneficiary did not sign proof of loss or submit to questioning-trustee's proof alone insufficient); Form No. 333 (answer alleging failure to give notice or make sufficient proof of loss); Form No. 334 (instructions to jury as to proof of loss); Form Nos. 341-343 (complaint or declaration-allegations as to waiver of written proof of loss-expressly made); Form No. 346 (instruction to jury as to waiver of proof of loss-acceptance of proof in different format-effect of insurer's failure to furnish blank form).

CJS. 45 C.J.S., Insurance §§ 1417 et seq.

§ 83-9-15. Age limit.

If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force, subject to any right of cancellation, until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

SOURCES: Codes, 1942, § 5687-07; Laws, 1956, ch. 330, § 7, eff July 1, 1956.

RESEARCH REFERENCES

Am Jur. 44 Am. Jur. 2d, Insurance §§ 765, 770, 772-775.

14A Am. Jur. Pl & Pr Forms, Rev, Insurance, Form 213.1.

CJS. 44 C.J.S., Insurance §§ 381, 382.

45 C.J.S., Insurance §§ 676-682, 1092.

§ 83-9-17. Non-application to certain policies.

Nothing in Sections 83-9-1 through 83-9-21 shall apply to or affect (a) any policy of workmen's compensation insurance or any policy of liability insurance with or without supplementary coverage therein; or (b) any policy or contract of reinsurance; or (c) life insurance, endowment or annuity contracts, or contracts supplemental thereto, which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract.

SOURCES: Codes, 1942, § 5687-08; Laws, 1956, ch. 330, § 8, eff July 1, 1956; Laws, 1996, ch. 320, § 1, eff from and after July 1, 1996.

Editor's Note — Chapter 408 of Laws, 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission".

JUDICIAL DECISIONS

1. In general.

In an action against a life insurer seeking recovery of double indemnity benefits that was filed more than four years subsequent to accrual of the claim, the trial court erred in concluding that the suit was barred by the three year statute of limitations governing accident and health insurance; although the policy, which was issued in connection with decedent's employment, was delivered to the insured rather than a master policy to the employer with a certificate to the employee, this fact did not remove the policy from the group insurance class or convert it to an individual plan; as a group policy, it was specifically exempted from the three-year statute of limitations and was controlled instead by the six-year statute of limitations. Williams v. Life Ins. Co., 367 So. 2d 922 (Miss. 1979).

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 813, December 1979.

§ 83-9-19. Penalty.

Any person, partnership, or corporation wilfully violating any provision of Sections 83-9-1 through 83-9-21, or order of the commissioner made in accordance with said sections, shall forfeit to the people of the state a sum not less than Fifty Dollars ($50.00) nor more than One Thousand Dollars ($1,000.00) for each such violation, which may be recovered by a civil action. The commissioner may also suspend or revoke the license of an insurer or agent for any such wilful violation.

SOURCES: Codes, 1942, § 5687-09; Laws, 1956, ch. 330, § 9, eff July 1, 1956.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 69.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance Form 11.1 (petition or application by insurance company against state commissioner of insurance to enjoin further proceedings to suspend or revoke insurance company's certificate of authority).

CJS. 44 C.J.S., Insurance § 139.

§ 83-9-21. Judicial review.

Any order or decision of the commissioner under Sections 83-9-1 through 83-9-21 shall be subject to review by appeal (writ of certiorari) to the circuit court at the instance of any party in interest. The filing of the appeal (petition for such writ) shall operate as a stay of any such order or decision until the court directs otherwise. The court may review all the facts and, in disposing of the issue before it, may modify, affirm, or reverse the order or decision of the commissioner in whole or in part.

SOURCES: Codes, 1942, § 5687-10; Laws, 1956, ch. 330, § 10, eff July 1, 1956.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-9-23. Health and accident insurance for resident senior citizens.

(1) Any insurance company authorized to do business of health insurance in this state may join with one or more other such insurance companies to offer to any resident of this state who is sixty-five (65) years of age or older, and to the spouse of such resident, insurance against major financial loss from accident or disease. Such insurance may be offered by such companies in their own names or in the name of a voluntary unincorporated association or other organization formed by such companies solely for the purpose of this section. The forms of applications, certificates, and policies of such insurance and the applicable premium rates shall be filed with the insurance commissioner, who may require additional pertinent information.

(2) A financial summary concerning any insurance written under the authority of this section shall be furnished annually to the insurance commissioner in such form as he may prescribe. If the insurance commissioner finds that any forms for such insurance are not in the public interest or that the premium rates charged are, by reasonable assumptions, excessive in relation to the benefits provided, he may disapprove such forms or premium rates after notice of at least twenty (20) days and hearing.

(3) Any person aggrieved by the decision of the commissioner under the provisions of this section may appeal therefrom within thirty (30) days after receipt of notice thereof to the Chancery Court of the First Judicial District of Hinds County by writ of certiorari, upon giving bond with surety or sureties and in such penalty as shall be approved by the chancery court of said county, conditioned that such appellant will pay all cost of the appeal in the event such appeal is unsuccessful. The said chancery court shall have the authority and jurisdiction to hear said appeal and render its decision in regard thereto, either in term time or vacation.

SOURCES: Codes, 1942, § 5687-21; Laws, 1962, ch. 470, §§ 1-3, eff from and after passage (approved February 13, 1962).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 67 et seq.

§ 83-9-25. Examination and return of policy.

Every individual accident and health policy or service contract, except travel or nonrenewable accident policies, issued for delivery in the State of Mississippi on or after July 1, 1971, by an insurance company, nonprofit hospital service plan, or medical service corporation shall have printed thereon or attached thereto a notice stating, in substance, that the person to whom the policy or contract is issued shall be permitted to return the policy or contract within not less than ten (10) days of its delivery to said purchaser and to have the premium paid refunded if, after examination of the policy or contract, the purchaser is not satisfied with it for any reason. If a policyholder or purchaser, pursuant to such notice, returns the policy or service contract to the insurance company or association at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning, and the parties shall be in the same position as if no policy or service contract had been issued.

SOURCES: Codes, 1942, § 5687-31; Laws, 1971, ch. 452, § 1, eff from and after July 1, 1971.

RESEARCH REFERENCES

ALR. Insurer's duty, and effect of its failure, to provide insured or payee with copy of policy or other adequate documentation of its terms. 78 A.L.R.4th 9.

Am Jur. 43 Am. Jur. 2d, Insurance § 263.

CJS. 44 C.J.S., Insurance §§ 416-419.

§ 83-9-27. Alcoholism care and treatment; coverage.

Notwithstanding any provision of any policy of accident or sickness insurance as defined by Section 83-9-1, issued on or after January 1, 1975, whenever such policy provides for the reimbursement for loss resulting from sickness, or from bodily injury by accidental means, or both, said reimbursement shall include health service benefits to any insured or any person covered thereunder, on the same basis as other benefits, for care and treatment of alcoholism.

For purposes of Sections 83-9-27 through 83-9-31, alcoholism is defined as the chronic and habitual use of alcoholic beverages by any person to the extent that such person has lost the power of self-control with respect to the use of such beverages.

SOURCES: Laws, 1974, ch. 522, § 1, eff from and after January 1, 1975.

Cross References — Alcoholism, alcohol abuse prevention, control and treatment, see §§ 41-30-1 et seq.

Commitment of alcoholics for treatment, see §§ 41-31-1 et seq.

RESEARCH REFERENCES

ALR. Clause in life, accident, or health policy excluding or limiting liability in case of insured's use of intoxicants or narcotics. 13 A.L.R.2d 987.

§ 83-9-29. Alcoholism care and treatment; application of law.

The provisions of Sections 83-9-27 through 83-9-31 shall apply only to group policies or group plans of health affording coverage from sickness, or bodily injury by accidental means, or both, or nonprofit health plans corporations regulated by the Mississippi Insurance Commission issued or renewed after January 1, 1975.

The provisions of Sections 83-9-27 through 83-9-31 shall not apply to any plan or policy which is individually underwritten or provided for a specific individual and the members of his family as a nongroup policy.

SOURCES: Laws, 1974, ch. 522, § 2, eff from and after January 1, 1975.

Editor's Note — Section 83-3-2, effective from and after January 1, 1988, provides that "any reference to Insurance Commission in Title 83 shall mean the Commissioner of Insurance".

§ 83-9-31. Alcoholism care and treatment; limitation of coverage.

The coverage required under Section 83-9-27 shall not exceed One Thousand Dollars ($1,000.00) during any calendar year, and shall extend only to treatment and services rendered by a physician and hospitals licensed by the state wherein the service or hospitalization is rendered.

SOURCES: Laws, 1974, ch. 522, § 3, eff from and after January 1, 1975.

§ 83-9-32. Coverage for medical benefits when dental care provided under physician-supervised anesthesia.

Every hospital, health or medical expenses insurance policy, hospital or medical service contract, health maintenance organization and preferred provider organization that is delivered or issued for delivery in this state and otherwise provides anesthesia benefits shall offer benefits for anesthesia and for associated facility charges when the mental or physical condition of the child or mentally handicapped adult requires dental treatment to be rendered under physician-supervised general anesthesia in a hospital setting, surgical center or dental office. This coverage shall be offered on an optional basis, and each primary insured must accept or reject such coverage in writing and accept responsibility for premium payment.

An insurer may require prior authorization for the anesthesia and associated facility charges for dental care procedures in the same manner that prior authorization is required for treatment of other medical conditions under general anesthesia. An insurer may require review for medical necessity and may limit payment of facility charges to certified facilities in the same manner that medical review is required and payment of facility charges is limited for other services. The benefit provided by this coverage shall be subject to the same annual deductibles or coinsurance established for all other covered benefits within a given policy, plan or contract. Private third party payers may not reduce or eliminate coverage due to these requirements.

A dentist shall consider the Indications for General Anesthesia as published in the reference manual of the American Academy of Pediatric Dentistry as utilization standards for determining whether performing dental procedures necessary to treat the particular condition or conditions of the patient under general anesthesia constitutes appropriate treatment.

The provisions of this section shall apply to anesthesia services provided by oral and maxillofacial surgeons as permitted by the Mississippi State Board of Dental Examiners.

The provisions of this section shall not apply to treatment rendered for temporal mandibular joint (TMJ) disorders.

SOURCES: Laws, 1999, ch. 528, § 1, eff from and after July 1, 1999.

ATTORNEY GENERAL OPINIONS

The provisions of Title 83, including Sections 83-9-5 and 83-9-32, which are placed squarely within the jurisdiction of the Department of Insurance, are not applicable to the State and School Employees Health Insurance Plan, which is clearly under the administration of the State and School Employees Health Insurance Management Board under the umbrella of the Department of Finance and Administration. Martinson, Dec. 6, 2002, A.G. Op. #02-0668.

The State and School Employees Health Insurance Plan is not governed by ERISA. Martinson, Dec. 6, 2002, A.G. Op. #02-0668.

§ 83-9-33. Coverage for newly born children.

(1) All individual and group health insurance policies providing coverage on an expense incurred basis and individual and group service or indemnity type contracts issued after January 1, 1980, by an insurer or nonprofit corporation which provides coverage for a family member of the insured or subscriber shall, as to such family members' coverage, also provide that the health insurance benefits applicable for children shall be payable with respect to a newly born child of the insured or subscriber from the moment of birth.

(2) The coverage for newly born children shall consist of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects, prematurities and birth abnormalities, but need not include routine well baby care. For purposes of this section, "necessary care and treatment" shall include transportation of the newborn to and from the nearest appropriately staffed and equipped facility for the treatment of such newborn child, when the attending physician certifies that special transportation is necessary to protect the health and safety of the newborn child. Cost of such transportation shall not exceed usual and customary charges up to Two Hundred Dollars ($200.00).

(3) If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child must be furnished to the insurer or nonprofit service or indemnity corporation within thirty-one (31) days after the date of birth in order to have the coverage continue beyond such thirty-one day period, and may require that payment of the required premium or fee be made within thirty (30) days after the mailing by the insurer or nonprofit corporation of the notice of premium or fee to the insured.

(4) The requirements of this section shall apply to all insurance policies and subscriber contracts delivered or issued for delivery in this state more than one hundred twenty (120) days after April 4, 1974.

SOURCES: Laws, 1974, ch. 523; Laws, 1979, ch. 435, eff from and after passage (approved March 27, 1979).

Cross References — Policy provisions generally, see § 83-9-5.

JUDICIAL DECISIONS

1. In general.

Section 83-9-33 is not pre-empted by ERISA. Being related to welfare benefit plan, section would be pre-empted if it did not regulate insurance, but it does regulate insurance because it mandates inclusion of certain mandatory minimum coverage in health insurance policies (in instant case, coverage of congenital defects in newly born children). Otherwise stated, statute was specifically directed and limited to insurance industry, has effect of spreading policy holder's risk, is integral part of policy relationship between insurer and insured, and by itself does not conflict with civil enforcement provisions of ERISA. Walters v. Pan Am. Life Ins. Co., 800 F. Supp. 436 (S.D. Miss. 1990).

RESEARCH REFERENCES

ALR. Coverage of artificial insemination procedures or other infertility treatments by health, sickness, or hospitalization insurance. 80 A.L.R.4th 1059.

Law Reviews. 1979 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 813, December 1979.

§ 83-9-34. Child immunizations; optional coverage; written acceptance or rejection; application of section.

(1) In this section, "health benefit plan" means a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident or sickness and that is offered by any insurance company, group hospital service corporation or health maintenance organization that delivers or issues for delivery an individual, group, blanket or franchise insurance policy or insurance agreement, a group hospital service contract or an evidence of coverage or, to the extent permitted, by the Employee Retirement Income Security Act of 1974 (29 USCS Section 1001 et seq.), by a multiple employer welfare arrangement as defined by Section 3, Employee Retirement Income Security Act of 1974 (29 USCS Section 1002) or any other analogous benefit arrangement. The term does not include:

(a) A plan that provides coverage:

(i) Only for a specified disease;

(ii) Only for accidental death or dismemberment;

(iii) For wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury; or

(iv) As a supplement to liability insurance.

(b) A Medicare supplemental policy as defined by Section 1882 (g)(1), Social Security Act (42 USCS Section 1395ss);

(c) Workers' compensation insurance coverage;

(d) Medical payment insurance issued as part of a motor vehicle insurance policy;

(e) A long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy meets the definition of a health benefit plan; or

(f) A hospital indemnity only policy.

(2) A health benefit plan that provides benefits for a family member of the insured shall provide an option for the insured to elect coverage for each newly born child of the insured, from birth through the date the child is twenty-four (24) months of age, for:

(a) Immunization against:

(i) Diphtheria;

(ii) Hepatitis B;
(iii) Measles;
(iv) Mumps;
(v) Pertussis;
(vi) Polio;
(vii) Rubella;
(viii) Tetanus;
(ix) Varicella; and
(x) Hemophilus Influenza B (HIB).

(b) Any other immunization that the Commissioner of Insurance determines to be required by law for the child.

(c) The coverage shall be offered on an optional basis, and each primary insured must accept or reject such coverage in writing and accept responsibility for premium payment.

(3) The benefits required to be offered under subsection (2) of this section may not be made subject to a deductible, copayment or coinsurance requirement.

(4) This section applies only to a health benefit plan that is delivered, issued for delivery or renewed on or after January 1, 1999. A health benefit plan that is delivered, issued for delivery or renewed before January 1, 1999, is governed by the law as it existed immediately before January 1, 1999, and that law is continued in effect for this purpose.

SOURCES: Laws, 1998, ch. 483, § 2, eff from and after January 1, 1999.

§ 83-9-35. Replacement of group or blanket health and accident policy or plan; succeeding carrier's plan to continue certain benefits and provisions.

(1) This section shall apply to any health benefit plan that provides coverage to two (2) or more employees of an employer in this state if any of the following conditions are satisfied:

(a) Any portion of the premium or benefits is paid by or on behalf of the employer;

(b) An eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the employer for any portion of the premium; or

(c) The health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of Sections 162, 125 or 106 of the United States Internal Revenue Code.

(2) This section shall not apply to a health benefit plan which is issued in good faith with no knowledge or intent that the plan will, at the time of issuance or thereafter, satisfy one or more of the conditions set forth in subsection (1), and the insurer has certified to the Department of Insurance that the policy form:

(a) Is not designed to be an employer-provided insurance.

(b) Is not intended to be an employer-provided insurance.

(c) Will not be advertised or marketed as employer-provided insurance.

(d) Will not be issued if the insurer knows that the policy will meet one (1) or more of the conditions set forth in subsection (1).

(3) This section shall not apply to an employer whose only role is collecting through payroll deductions the premiums of individual policies on behalf of employees.

(4) "Health benefit plan" means any group hospital or medical policy or group certificate delivered or issued for delivery in this state by an insurer; a nonprofit hospital, medical and surgical service corporation; a health maintenance organization; a fully insured multiple employer welfare arrangement; or any combination of these, except hospital daily indemnity plans, specified disease only policies, or other limited, supplemental benefit insurance policies.

(5) Whenever a health benefit plan of one carrier replaces a health benefit plan of similar benefits of another carrier:

(a) The prior carrier shall remain liable only to the extent of its accrued liabilities. The position of the prior carrier shall be the same whether the group policyholder or other entity secures replacement coverage from a new carrier, or a self-insurer, or foregoes the provision of coverage.

(b) Each person who was validly covered under the prior health plan, who is eligible for coverage in accordance with the succeeding carrier's plan of benefits, with respect to classes eligible, shall be covered by that carrier's plan of benefits. No previously covered person shall be considered ineligible for coverage solely because of his health condition or claims experience.

(c) The succeeding carrier, in determining whether a preexisting condition provision applies to an eligible employee or dependent, shall credit the time the person was covered under the prior plan if the previous coverage was continuous to a date not more than thirty (30) days prior to the effective date of the new coverage.

(d) The succeeding carrier, in applying any deductibles or waiting periods in its plan, shall give credit for the satisfaction or partial satisfaction of the same or similar provisions under a prior plan providing similar benefits. In the case of deductible provisions, the credit shall apply for the same or overlapping benefit periods and shall be given for expenses actually incurred and applied against the deductible provisions of the prior carrier's plan during the ninety (90) days preceding the effective date of the succeeding carrier's plan, but only to the extent these expenses are recognized under the terms of the succeeding carrier's plan and are subject to a similar deductible provision.

(e) Whenever a determination of the prior carrier's benefit is required by the succeeding carrier, at the succeeding carrier's request, the prior carrier shall furnish a statement of the benefits available or pertinent information, sufficient to permit verification of the benefit determination or the determination itself by the succeeding carrier. For the purposes of this paragraph, benefits of the prior plan shall be determined in accordance with all of the definitions, conditions and covered expense provisions of the prior plan rather than those of the succeeding plan. The benefit determination will be made as if coverage was not replaced by the succeeding carrier.

(f) This section shall be applicable to any coverage offered and maintained as a result of membership or connection with any association or organization which exists for the purpose of offering health insurance to its members, and shall further be applicable to any health insurance policy or plan which is not made available to the general public on an individual basis with the exception of any State of Mississippi comprehensive health association.

SOURCES: Laws, 1982, ch. 380; Laws, 1991, ch. 571, § 1; Laws, 1993, ch. 492, § 1, eff from and after July 1, 1993.

Federal Aspects — Sections 106, 125 and 162 of the Internal Revenue Code are codified as 26 USCS §§ 106, 125 and 162.

JUDICIAL DECISIONS

1. In general.

Employee claim for insurance benefits under employer's group health policy, after insurer had denied coverage for surgery performed to repair pre-existing birth defect of employee's son, conflicted with civil enforcement provision of ERISA limiting employee to remedies available under ERISA's civil enforcement scheme. Walters v. Pan Am. Life Ins. Co., 800 F. Supp. 436 (S.D. Miss. 1990).

Replacement insurer, under group health policy, was not required to provide coverage for dependent of insured who suffered from multiple sclerosis where disease was pre-existing condition relative to replacement insurer's coverage and prior insurer's coverage for this illness had apparently run out at time of replacement coverage. Freeman v. Mowdy, 743 F. Supp. 475 (S.D. Miss. 1990).

§ 83-9-36. Process by which prescribing practitioner may request override of restriction on medication restricted for use by insurer step therapy or fail-first protocol; circumstances under which insurer to grant override [Effective January 1, 2012].

(1) When medications for the treatment of any medical condition are restricted for use by an insurer by a step therapy or fail-first protocol, the prescribing practitioner shall have access to a clear and convenient process to expeditiously request an override of that restriction from the insurer. An override of that restriction shall be expeditiously granted by the insurer under the following circumstances:

(a) The prescribing practitioner can demonstrate, based on sound clinical evidence, that the preferred treatment required under step therapy or fail-first protocol has been ineffective in the treatment of the insured's disease or medical condition; or

(b) Based on sound clinical evidence or medical and scientific evidence:

(i) The prescribing practitioner can demonstrate that the preferred treatment required under the step therapy or fail-first protocol is expected or likely to be ineffective based on the known relevant physical or mental characteristics of the insured and known characteristics of the drug regimen; or

(ii) The prescribing practitioner can demonstrate that the preferred treatment required under the step therapy or fail-first protocol will cause or will likely cause an adverse reaction or other physical harm to the insured.

(2) The duration of any step therapy or fail-first protocol shall not be longer than a period of thirty (30) days when the treatment is deemed clinically ineffective by the prescribing practitioner. When the prescribing practitioner can demonstrate, through sound clinical evidence, that the originally prescribed medication is likely to require more than thirty (30) days to provide any relief or an amelioration to the insured, the step therapy or fail-first protocol may be extended up to seven (7) additional days.

(3) As used in this section:

(a) "Insurer" means any hospital, health, or medical expense insurance policy, hospital or medical service contract, employee welfare benefit plan, contract or agreement with a health maintenance organization or a preferred provider organization, health and accident insurance policy, or any other insurance contract of this type, including a group insurance plan. However, the term "insurer" does not include a preferred provider organization that is only a network of providers and does not define health care benefits for the purpose of coverage under a health care benefits plan.

(b) "Practitioner" has the same meaning as defined in Section 73-21-73.

SOURCES: Laws, 2011, ch. 500, § 1, eff from and after Jan. 1, 2012.

COVERAGE FOR TREATMENT OF MENTAL ILLNESS, TEMPOROMANDIBULAR JOINT DISORDER AND CRANIOMANDIBULAR DISORDER

Sec.	
83-9-37.	Definitions.
83-9-39.	Coverage.
83-9-40.	Determination of eligibility for exemptions for providing mental illness coverage; formula for computing increases in treatment costs; definitions.
83-9-41.	Mental illness benefits.
83-9-43.	Nondiscrimination.
83-9-45.	Coverage and benefits for treatment of temporomandibular joint disorder and craniomandibular disorder.
83-9-46.	Diabetes treatment; coverage; service providers; enforcement; application to other policies.

§ 83-9-37. Definitions.

As used in Sections 83-9-37 through 83-9-43, Mississippi Code of 1972:

(a) "Alternative delivery system" means a health maintenance organization (HMO), preferred provider organization (PPO), exclusive provider organization (EPO), individual practice association (IPA), medical staff hospital organization (MESH), physician hospital organization (PHO), and any other plan or organization which provides health care services through a mechanism other than insurance and is regulated by the State of Mississippi.

(b) "Covered benefits" means the health care services or treatment available to an insured party under a health insurance policy for which the insurer will pay part or all of the costs.

(c) "Hospital" means a facility licensed as a hospital by the Mississippi Department of Health.

(d) "Health service provider" means a physician or psychologist who is authorized by the facility in which services are delivered to provide mental health services in an inpatient or outpatient setting, within his or her scope of licensure.

(e) "Inpatient services" means therapeutic services which are available twenty-four (24) hours a day in a hospital or other treatment facility licensed by the State of Mississippi.

(f) "Mental illness" means any psychiatric disease identified in the current edition of The International Classification of Diseases or The American Psychiatric Association Diagnostic and Statistical Manual.

(g) "Outpatient services" means therapeutic services which are provided to a patient according to an individualized treatment plan which does not require the patient's full-time confinement to a hospital or other treatment facility licensed by the State of Mississippi. The term "outpatient services" refers to services which may be provided in a hospital, an outpatient treatment facility or other appropriate setting licensed by the State of Mississippi.

(h) "Outpatient treatment facility" means (i) a clinic or other similar location which is certified by the State of Mississippi as a qualified provider of outpatient services for the treatment of mental illness or (ii) the office of a health service provider.

(i) "Partial hospitalization" means inpatient treatment, other than full twenty-four-hour programs, in a treatment facility licensed by the State of Mississippi; the term includes day, night and weekend treatment programs.

(j) "Physician" means a physician licensed by the State of Mississippi to practice therein.

(k) "Psychologist" means a psychologist licensed by the State of Mississippi to practice therein.

SOURCES: Laws, 1991, ch. 570, § 1; reenacted without change by Laws, 1994, ch. 354, § 1, eff from and after July 1, 1994.

Editor's Note — Laws of 1991, ch. 570, § 6, effective from and after July 1, 1991, which enacted Sections 83-9-37 through 83-9-43, provided that the act was to stand repealed from and after July 1, 1994. Subsequently, Laws of 1994, ch. 354, § 6, amended Laws of 1991, ch. 570, § 6, so as to delete the provision for the repeal of this section.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-9-39. Coverage.

(1)(a) Except as otherwise provided herein, all alternative delivery systems and all group health insurance policies, plans or programs regulated by the State of Mississippi shall provide covered benefits for the treatment of mental illness, except for policies which only provide coverage for specified diseases and other limited benefit health insurance policies and negotiated labor contracts. This coverage for treatment of mental illness shall not be required if the application of this provision results in an increase in the cost under the plan or coverage of one percent (1%) or more as determined in Section 83-9-40.

(b) Health insurance policies, plans or programs of any employer of one hundred (100) or fewer eligible employees and all individual health insurance policies which are regulated by the State of Mississippi which do not currently offer benefits for treatment of mental illness shall offer covered benefits for the treatment of mental illness, except for policies which only provide coverage for specified diseases and other limited benefit health insurance policies and negotiated labor contracts. This coverage shall be offered on an optional basis, but the owner of the policy, plan or program must reject such coverage in writing.

(2) Covered benefits for inpatient treatment of mental illness in insurance policies and other contracts subject to Sections 83-9-37 through 83-9-43 shall be limited to inpatient services certified as necessary by a health service provider.

(3) Covered benefits for outpatient treatment of mental illness in insurance policies and other contracts subject to Sections 83-9-37 through 83-9-43 shall be limited to outpatient services certified as necessary by a health service provider.

(4) Before an insured party may qualify to receive benefits under Sections 83-9-37 through 83-9-43, a health service provider shall certify that the individual is suffering from mental illness and refer the individual for the appropriate treatment.

(5) All mental illness, treatment or services with respect to such treatment eligible for health insurance coverage shall be subject to professional utilization and peer review procedures.

(6) The provisions of this section shall apply only to alternative delivery systems and individual and group health insurance policies, plans or programs issued or renewed after July 1, 1991.

(7) The exclusion period for coverage of a preexisting mental condition shall be the same period of time as that for other medical illnesses covered under the same plan, program or contract.

SOURCES: Laws, 1991, ch. 570, § 2; reenacted without change by Laws, 1994, ch. 354, § 2; Laws, 2001, ch. 533, § 1, eff from and after January 1, 2002.

Editor's Note — Laws of 1991, ch. 570, § 6, effective from and after July 1, 1991, which enacted Sections 83-9-37 through 83-9-43, provided that the act was to stand repealed from and after July 1, 1994. Subsequently, Laws of 1994, ch. 354, § 6, amended Laws of 1991, ch. 570, § 6, so as to delete the provision for the repeal of this section.

§ 83-9-40. Determination of eligibility for exemptions for providing mental illness coverage; formula for computing increases in treatment costs; definitions.

In order to determine if the treatment of mental illness benefit coverage required in Sections 83-9-39 and 83-9-41 results in an increase in the cost under a group health insurance plan of one percent (1%) or more, the total cost incurred by the plan, including both mental health costs and medical/surgical costs, must be divided by such total cost reduced by the costs solely required to comply with Sections 83-9-39 and 83-9-41. Such costs include mental health claims that would have been denied absent plan amendments required to comply with Sections 83-9-39 and 83-9-41, the administrative costs related to those claims and other administrative costs attributable to complying with Sections 83-9-39 and 83-9-41. Premium payments are not considered in this calculation. The ratio is mathematically expressed by the following formula:

$$= \frac{IE}{IE - (CE + AE)} \geq 1.01000$$

For purposes of this section:

"IE" means the incurred expenditures during the base period. "CE" means the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with Sections 83-9-39 and 83-9-41.

"AE" means administrative costs related to claims in CE and other administrative costs attributable to complying with Sections 83-9-39 and 83-9-41.

"Base period" means the period that begins on the first day in any plan year that the plan complies with the requirements of Sections 83-9-39 and 83-9-41 and shall extend for a period of at least six (6) consecutive calendar months. The base period shall not begin before January 1, 2002.

A group insurance plan may exercise the exemption as soon as the plan documents a cost increase of one percent (1%) or more and provides a thirty-day notice to participants and to the Department of Insurance for informational purposes.

SOURCES: Laws, 2001, ch. 533, § 3, eff from and after Jan. 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the next-to-last paragraph. The letter "s" was added to the end of

"Section" so that "Section 83-9-39 and 83-9-41" now reads "Sections 83-9-39 and 83-9-41." The Joint Committee ratified the correction at its August 5, 2008, meeting.

§ 83-9-41. Mental illness benefits.

(1) Covered benefits for services in this section shall be limited to coverage of treatment of clinically significant mental illness.

(2) Treatment under this section shall be covered for a minimum of thirty (30) days per year for inpatient services, a minimum of sixty (60) days per year for partial hospitalization, and a minimum of fifty-two (52) outpatient visits per year.

(3) The rate of payment for inpatient services and partial hospitalization shall be the same as provided for any other condition. The rate of payment for outpatient visits shall be a minimum of fifty percent (50%) of covered expenses which may be limited to a maximum payment of Fifty Dollars ($50.00) per visit.

SOURCES: Laws, 1991, ch. 570, § 3; reenacted without change by Laws, 1994, ch. 354, § 3; Laws, 2001, ch. 533, § 2, eff from and after January 1, 2002.

Editor's Note — Laws of 1991, ch. 570, § 6, effective from and after July 1, 1991, which enacted Sections 83-9-37 through 83-9-43, provided that the act was to stand repealed from and after July 1, 1994. Subsequently, Laws of 1994, ch. 354, § 6, amended Laws of 1991, ch. 570, § 6, so as to delete the provision for the repeal of this section.

Cross References — Allowance of deductible or co-payment plans and annual and lifetime limits on benefit payments, see § 83-9-43.

§ 83-9-43. Nondiscrimination.

Methods of determining levels of payment or reimbursement for services or for the type of facility charges eligible for payment or reimbursement pursuant to Sections 83-9-37 through 83-9-43 shall be consistent with those for medical illnesses in general and shall take into consideration customary charges for those services. Deductible or co-payment plans, methods of determination, and limits on total amounts payable to an individual in a calendar year or lifetime payment limits may be applied to benefits paid to or on behalf of patients during the course of treatment as described in Sections 83-9-37 through 83-9-43, but in any case shall not be less favorable than those applied to medical illnesses generally in each policy or contract, except as provided under Section 83-9-41, Mississippi Code of 1972.

SOURCES: Laws, 1991, ch. 570, § 5; reenacted without change by Laws, 1994, ch. 354, § 4, eff from and after July 1, 1994.

Editor's Note — Laws of 1991, ch. 570, § 6, effective from and after July 1, 1991, which enacted Sections 83-9-37 through 83-9-43, provided that the act was to stand repealed from and after July 1, 1994. Subsequently, Laws of 1994, ch. 354, § 6, amended Laws of 1991, ch. 570, § 6, so as to delete the provision for the repeal of this section.

§ 83-9-45. Coverage and benefits for treatment of temporomandibular joint disorder and craniomandibular disorder.

Except for policies which only provide coverage for specified diseases and other limited benefit health insurance policies, no policy or certificate of health, medical, hospitalization or accident and sickness insurance and no subscriber contract provided by a nonprofit health service plan corporation or health maintenance organization shall be issued, renewed, continued, issued for delivery or executed in this state after July 1, 1991, unless the policy, plan or contract specifically offers coverage for diagnostic and surgical treatment of temporomandibular joint disorder and craniomandibular disorder. Coverage for diagnostic services and surgery shall be the same as that for treatment to any other joint in the body and shall apply if the treatment is administered or prescribed by a physician or dentist. The minimum lifetime coverage for temporomandibular joint disorder and craniomandibular treatment shall be no less than Five Thousand Dollars ($5,000.00).

SOURCES: Laws, 1991, ch. 570, § 4; reenacted without change by Laws, 1994, ch. 354, § 5, eff from and after July 1, 1994.

Editor's Note — Laws of 1991, ch. 570, § 6, effective from and after July 1, 1991, which enacted Sections 83-9-37 through 83-9-43, provided that the act was to stand repealed from and after July 1, 1994. Subsequently, Laws of 1994, ch. 354, § 6, amended Laws of 1991, ch. 570, § 6, so as to delete the provision for the repeal of this section.

RESEARCH REFERENCES

ALR. Coverage under medical and health insurance plans for services performed by dentist, oral surgeons, and orthodontists. 43 A.L.R.5th 657.

§ 83-9-46. Diabetes treatment; coverage; service providers; enforcement; application to other policies.

(1) Except as otherwise provided herein, from and after January 1, 1999, all individual and group health insurance policies or plans, pooled risk policies and all other forms of managed/capitated care plans or policies regulated by the State of Mississippi shall offer coverage for diabetes treatments, including, but not limited to, equipment, supplies used in connection with the monitoring of blood glucose and insulin administration and self-management training/education and medical nutrition therapy in an outpatient, inpatient or home health setting. An amount of coverage not to exceed Two Hundred Fifty Dollars ($250.00) shall be offered annually for self-management training/education and medical nutrition therapy under this section. The coverage shall be offered on an optional basis, and each primary insured must accept or reject such coverage in writing and accept responsibility for premium payment. The coverage shall include treatment of all forms of diabetes, including, but not limited to, Type I, Type II, Gestational and all secondary forms of diabetes regardless of mode of treatment if such treatment is prescribed by a health

care professional legally authorized to prescribe such treatment and regardless of the age of onset or duration of the disease. Such health insurance plans and policies shall not reduce, eliminate or delay coverage due to the requirements of this section.

(2) The services provided in an outpatient, inpatient or home health setting shall be provided by a Certified Diabetes Educator (CDE), who is appropriately certified, licensed or registered to practice in the State of Mississippi. Medical nutrition therapy shall be provided by a Registered Dietician (RD) appropriately licensed to practice in the State of Mississippi. All services shall be based on nationally recognized standards including, but not limited to, the American Diabetes Association Practice Guidelines.

(3) The benefits provided in this section shall be subject to the same annual deductibles or coinsurance established for all other covered benefits within a given policy.

(4) The Commissioner of Insurance shall enforce the provisions of this section.

(5) Nothing in this section shall apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care or other limited benefit health insurance policies.

SOURCES: Laws, 1998, ch. 483, § 1, eff from and after January 1, 1999.

NOTICE OF PAYMENT FOR SERVICES MADE DIRECTLY TO PATIENT

SEC.

83-9-47. Third-party payors required to notify health care providers of payment for services made directly to patient.
83-9-49. Limit on exclusion of preexisting condition from health and accident insurance coverage; definition of preexisting condition; exceptions.
83-9-51. Group policy defined; election to continue coverage after employment termination; continuation of coverage by dependent spouse or child; exclusions; payment; termination of coverage; notice.
83-9-53. Authorization to establish rules and regulations.

§ 83-9-47. Third-party payors required to notify health care providers of payment for services made directly to patient.

(1) As used in this section, the following terms shall be defined as follows:

(a) "Third-party payor" means any insurer, nonprofit hospital service plan, health care service plan, health maintenance organization, self-insurer or any person or other entity which provides payment for medical and related services.

(b) "Health care provider" means a physician, optometrist, chiropractor, dentist, podiatrist, pharmacist, psychologist or hospital licensed by the State of Mississippi.

(c) "Patient" means any natural person who has received medical care or services from any medical care provider within the State of Mississippi.

(2) Any third-party payor who pays a patient or policyholder on behalf of a patient directly for medical care or services rendered by a health care

provider shall provide information concerning the amount, date and nature of any such payment to the provider of services. The information may be provided by telephone, facsimile or by mailing a copy of the "explanation of benefits" to the provider. If the information is provided by sending a copy of the "explanation of benefits" to the provider, then the third-party payor may require that the reasonable cost of producing and mailing the information be paid by the provider. The requirements of this subsection shall not apply to the following: a fixed-indemnity policy, a limited benefit health insurance policy, medical payment coverage or personal injury protection coverage in a motor vehicle policy, coverage issued as a supplement to liability insurance or workers' compensation.

SOURCES: Laws, 1991, ch. 474, § 1, eff from and after July 1, 1991.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-9-49. Limit on exclusion of preexisting condition from health and accident insurance coverage; definition of preexisting condition; exceptions.

(1) Any group hospital, health or medical expense insurance policy, hospital or medical service contract, health and accident insurance policy or any other insurance contract of this type which is delivered or issued for delivery in this state on or after January 1, 1994, shall not deny, exclude or limit benefits for a covered individual for losses due to a preexisting condition incurred more than twelve (12) months following the effective date of the individual's coverage. Any group policy, contract or plan subject to this section shall not contain a definition of a preexisting condition more restrictive than the following:

(a) A condition that would have caused an ordinary prudent person to seek medical advice, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage;

(b) A condition for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage.

(2) Any individual hospital, health or medical expense insurance policy, hospital or medical service contract, health and accident insurance policy or any other insurance contract of this type which is delivered or issued for delivery in this state on or after January 1, 1994, shall not deny, exclude or limit benefits for a covered individual for losses due to a preexisting condition incurred more than twelve (12) months following the effective date of the individual's coverage. Any individual policy, contract or plan subject to this section shall not contain a definition of a preexisting condition more restrictive than the following:

(a) A condition that would have caused an ordinary prudent person to seek medical advice, diagnosis, care or treatment during the twelve (12) months immediately preceding the effective date of coverage;

(b) A condition for which medical advice, diagnosis, care or treatment was recommended or received during the twelve (12) months immediately preceding the effective date of coverage;

(c) A pregnancy existing on the effective date of coverage.

(3) This section shall not apply to hospital daily indemnity plans, specified disease only policies, or other limited, supplemental benefit insurance policies.

SOURCES: Laws, 1993, ch. 492, § 2; Laws, 1997, ch. 340, § 1, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 608, 625.

§ 83-9-51. Group policy defined; election to continue coverage after employment termination; continuation of coverage by dependent spouse or child; exclusions; payment; termination of coverage; notice.

(1) "Group policy" means a group accident and health insurance policy or group certificate delivered or issued for delivery in this state by an insurer; a nonprofit hospital, medical and surgical service corporation; a health maintenance organization; a fully insured multiple employer welfare arrangement; or any combination thereof.

(2) A group policy delivered or issued for delivery in this state which insures employees or members, and their eligible dependents, if they have elected to include them, for hospital, surgical or major medical insurance on an expense incurred or service basis, other than hospital daily indemnity plans, specified disease only policies, or other limited, supplemental benefit insurance policies, shall provide that employees or members whose insurance for these types of coverage under the group policy would otherwise terminate because of termination of active employment or membership, or termination of membership in the eligible class or classes under the policy, shall be entitled to continue their hospital, surgical and medical insurance under that group policy, for themselves and their eligible dependents with respect to whom they were insured on the date of termination, subject to all of the group policy's terms and conditions applicable to those forms of insurance and to the conditions specified in this section. The terms and conditions set forth in this section are intended as minimum requirements and shall not be construed to impose additional or different requirements upon those group hospital, surgical or major medical plans already in force, or hereafter placed into effect, that provide continuation benefits equal to or better than those required in this section.

(3) Continuation shall only be available to an employee or member or an eligible dependent who has been continuously insured under the group policy, or for similar benefits under any other group policy that it replaced, during the period of three (3) consecutive months immediately before the date of termination. The continued policy must cover all dependents covered under the group policy. A dependent spouse of an employee or member may elect continuation of dependent spouse and dependent child coverage for a period of coverage not to exceed twelve (12) months after: (a) the date of the death of the employee or member; (b) the date of the spouse's divorce from the employee or member; or (c) the date that the employee or member becomes entitled to Medicare benefits as provided under Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

A dependent child of an employee or member may elect continuation of his or her coverage for a period not to exceed twelve (12) months after the child ceases to be an eligible dependent of the employee or member.

(4) Continuation shall not be available for any person who is or could be covered by any other arrangement of hospital, surgical or medical coverage for individuals in a group, whether insured or uninsured, within thirty-one (31) days immediately following the date of termination, or whose insurance terminated because of fraud or because he failed to pay any required contribution for the insurance, or who is eligible for continuation under the provisions of the federal Consolidated Omnibus Budget Reconciliation Act of 1987 (COBRA) or who becomes entitled to Medicare benefits.

(5) Continuation shall not include dental, vision care or any other benefits provided under the group policy in addition to its hospital, surgical or major medical benefits.

(6) An employee or member or an eligible dependent electing continuation shall pay to the insurer, in advance, the amount of contribution required, which shall not be more than the full group rate for the instance applicable to the employee or member or an eligible dependent under the group policy on the due date of each payment. The employee or member or an eligible dependent shall not be required to pay the amount of the contribution less often than monthly. In order to be eligible for continuation of coverage, the employee or member or an eligible dependent shall make a written election of continuation on a form furnished by the insurer and pay the first contribution, in advance, to the insurer on or before the date on which the employee's or member's or eligible dependent's insurance would otherwise terminate except as provided herein.

(7) Continuation of insurance under the group policy for any person shall terminate on the earliest of the following dates:

(a) The date twelve (12) months after the date the employee's or member's insurance under the policy would otherwise have terminated because of termination of employment or membership.

(b) The date ending the period for which the employee or member or dependent last makes his required contribution, if he discontinues his contributions.

(c) The date the employee or member or dependent becomes or is eligible to become covered for similar benefits under any arrangement of coverage for individuals in a group, whether insured or uninsured.

(d) The date on which the group policy is terminated or, in the case of a multiple employer plan, the date his employer terminates participation under the group master policy.

(e) The date on which an enrolled member of a health maintenance organization legally resides outside the service area of the organization.

(f) The date the surviving spouse or former spouse of the employee or member remarries and becomes covered under a group health plan that does not exclude coverage for preexisting conditions.

(g) The date the employee or member or dependent becomes entitled to benefits under Medicare.

(8) A notification of the continuation privilege shall be included in each certificate of coverage.

(9) In the event of the employee's or member's death, the insurer shall provide notice of the continuation privilege within fourteen (14) days of the death to the person who is eligible to elect continuation. Such person has thirty (30) days after the notice to elect continuation.

(10) In the event that a dependent child of the employee or member ceases to be an eligible dependent, the insurer shall provide notice of the continuation privilege to the child within fourteen (14) days after the employee or member notifies the insurer of the child's ineligibility. The child has thirty (30) days after the notice to elect continuation of coverage.

(11) In the event of the employee's or member's divorce from his or her dependent spouse, the insurer shall provide notice of the continuation privilege to the spouse within fourteen (14) days after the employee or member notifies the insurer of the divorce. The spouse has thirty (30) days after the notice to elect continuation of coverage.

SOURCES: Laws, 1993, ch. 492, § 3; Laws, 1995, ch. 541, § 1, eff from and after July 1, 1995.

Federal Aspects — The Consolidated Omnibus Budget Reconciliation Act of 1987 (COBRA) is codified as 29 USCS §§ 1161 et seq.

Title XVIII of the Social Security Amendments of 1965, see 42 USCS §§ 1395 et seq.

RESEARCH REFERENCES

ALR. Group insurance: construction, application, and effect of policy provision extending conversion privilege to employee after termination of employment. 32 A.L.R.4th 1037.

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1842-1856.

§ 83-9-53. Authorization to establish rules and regulations.

The Commissioner of Insurance may establish such rules and regulations as may be necessary or desirable to carry out Sections 83-9-47 through 83-9-53.

SOURCES: Laws, 1993, ch. 492, § 4, eff from and after July 1, 1993.

MEDICARE SUPPLEMENT INSURANCE

SEC.
83-9-101. Definitions.
83-9-102. Applicability of provisions.
83-9-103. Regulations to be issued by commissioner.
83-9-105. Adoption of minimum standards for benefits; claim payments, etc.
83-9-106. Minimum reserves for accident and health insurance companies.
83-9-107. Minimum standards for loss ratios.
83-9-108. Mammography; optional coverage; written acceptance or rejection; application of section.
83-9-109. Outline of coverage.
83-9-110. Review and approval of advertising by commissioner.
83-9-111. Right to return policy or certificate.
83-9-112. Penalty for issuers violating statutory provisions.
83-9-113. Regulations subject to administrative procedures law.
83-9-115. Effect of partial invalidity of provisions.

§ 83-9-101. Definitions.

As used in Sections 83-9-101 through 83-9-113:

(a) "Applicant" means:

(i) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(ii) In the case of a group Medicare supplement policy, the proposed certificate holder.

(b) "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplemental policy.

(c) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(d) "Commissioner" means the Commissioner of Insurance of this state.

(e) "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(f) "Medicare supplement policy" means a group or individual policy of accident and health insurance, or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, or an issued policy under a demonstration project specified in 42 USCS 1395(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

(g) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(h) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

SOURCES: Laws, 1981, ch. 433, § 1; Laws, 1992, ch. 337 § 1; Laws, 1996, ch. 321, § 1, eff from and after passage (approved March 17, 1996).

Editor's Note — Section 8 of Chapter 433, Laws of 1981, provides as follows:

"SECTION 8. This act shall be effective on October 1, 1981, and shall apply to policies and subscriber contracts delivered or issued for delivery in this state after such later date as is specified in the regulations adopted by the commissioner."

Federal Aspects — Title XVIII of the Social Security Amendments of 1965, see 42 USCS §§ 1395 et seq.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

Am Jur. 70A Am. Jur. 2d, Social Security and Medicare §§ 2045, 2063, 2112, 2439.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 231-246.

§ 83-9-102. Applicability of provisions.

(1) Sections 83-9-101 through 83-9-115 shall apply to:

(a) All Medicare supplement policies delivered or issued for delivery in this state on or after April 20, 1992, and

(b) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state.

(2) Sections 83-9-101 through 83-9-115 shall not apply to a policy of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

(3) Except as otherwise specifically provided in Section 83-9-109(4), Sections 83-9-101 through 83-9-115 are not intended to prohibit or apply to insurance policies or health care benefit plans, including group conversion policies, provided to Medicare eligible persons which policies are not marketed or held to be Medicare supplement policies or benefit plans.

SOURCES: Laws, 1992, ch. 337 § 2; Laws, 1996, ch. 321, § 2, eff from and after passage (approved March 17, 1996).

§ 83-9-103. Regulations to be issued by commissioner.

(1) The commissioner shall adopt reasonable regulations to establish specific standards for policy provisions of Medicare supplement policies and certificates. Such standards shall be in addition to and in accordance with applicable laws of this state including Sections 83-9-1 through 83-9-21, Mississippi Code of 1972. No requirement of the insurance code relating to minimum required policy benefits, other than the minimum standards con-

tained in Sections 83-9-101 through 83-9-115, shall apply to Medicare supplement policies and certificates. The standards may cover, but not be limited to:

(a) Terms of renewability;
(b) Initial and subsequent conditions of eligibility;
(c) Nonduplication of coverage;
(d) Probationary periods;
(e) Benefit limitations, exceptions and reductions;
(f) Elimination periods;
(g) Requirements for replacement;
(h) Recurrent conditions; and
(i) Definitions of terms.

(2) The commissioner may adopt reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair or unfairly discriminatory to any person insured or proposed to be insured under a Medicare supplement policy or certificate.

(3) Notwithstanding any other provisions of law, a Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(4) The commissioner may adopt such reasonable regulations as are necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations promulgated thereunder, including but not limited to:

(a) Requiring refunds or credits if the policies or certificates do not meet loss ratio requirements;

(b) Establishing a uniform methodology for calculating and reporting loss ratios;

(c) Assuring public access to policies, premiums and loss ratio information of issuers of Medicare supplement insurance;

(d) Establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases; and

(e) Establishing a policy for holding public hearings prior to approval of premium increases.

(5) No Medicare supplement policy or certificate in force in the State shall contain benefits that duplicate benefits provided by Medicare.

SOURCES: Laws, 1981, ch. 433, § 2; Laws, 1992, ch. 337 § 3, eff from and after passage (approved April 20, 1992).

Editor's Note — Section 8 of Chapter 433, Laws of 1981, provides as follows:

"SECTION 8. This act shall be effective on October 1, 1981, and shall apply to policies and subscriber contracts delivered or issued for delivery in this state after such later date as is specified in the regulations adopted by the commissioner."

RESEARCH REFERENCES

ALR. Validity, construction, and application of 42 USCS § 1320c-5, providing for obligations of health care practitioners and providers of health care services under medicare. 102 A.L.R. Fed. 473.

Am Jur. 70A Am. Jur. 2d, Social Security and Medicare §§ 2045, 2063, 2112, 2439.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 231-246.

§ 83-9-105. Adoption of minimum standards for benefits; claim payments, etc.

The commissioner shall adopt reasonable regulations to establish minimum standards for benefits, claims payment, marketing practices and compensation arrangements and reporting practices for Medicare supplement policies and certificates.

SOURCES: Laws, 1981, ch. 433, § 3; Laws, 1992, ch. 337 § 4, eff from and after passage (approved April 20, 1992).

Editor's Note — Section 8 of Chapter 433, Laws of 1981, provides as follows: "SECTION 8. This act shall be effective on October 1, 1981, and shall apply to policies and subscriber contracts delivered or issued for delivery in this state after such later date as is specified in the regulations adopted by the commissioner."

RESEARCH REFERENCES

Am Jur. 70A Am. Jur. 2d, Social Security and Medicare §§ 2045, 2063, 2112, 2439.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 231-246.

§ 83-9-106. Minimum reserves for accident and health insurance companies.

The Commissioner of Insurance shall establish regulations setting forth standards to provide minimum reserves for accident and health insurance companies, including nonprofit hospital, medical and surgical service corporations.

SOURCES: Laws, 1992, ch. 426, § 1, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 28, 38.

§ 83-9-107. Minimum standards for loss ratios.

Medicare supplement policies shall return to policyholders benefits which are reasonable in relation to the premium charged. The commissioner shall issue reasonable regulations to establish minimum standards for loss ratios of Medicare supplement policies on the basis of incurred claims experience, or incurred health care expenses when coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums in accordance with accepted actuarial principles and practices.

SOURCES: Laws, 1981, ch. 433, § 4; Laws, 1992, ch. 337 § 5, eff from and after passage (approved April 20, 1992).

Editor's Note — Section 8 of Chapter 433, Laws of 1981, provides as follows: "SECTION 8. This act shall be effective on October 1, 1981, and shall apply to policies and subscriber contracts delivered or issued for delivery in this state after such later date as is specified in the regulations adopted by the commissioner."

RESEARCH REFERENCES

Am Jur. 70A Am. Jur. 2d, Social Security and Medicare §§ 2045, 2063, 2112, 2439.

CJS. 81 C.J.S. Social Security and Public Welfare §§ 231-246.

§ 83-9-108. Mammography; optional coverage; written acceptance or rejection; application of section.

(1) Every insurer shall offer in each group or individual policy, contract or certificate of health insurance issued or renewed for persons who are residents of this state, coverage for annual screenings by low-dose mammography for all women thirty-five (35) years of age or older for the presence of occult breast cancer within the provisions of the policy, contract or certificate. This coverage shall be offered on an optional basis, and each primary insured must accept or reject such coverage in writing and accept responsibility for premium payment.

(2) Such benefits shall be at least as favorable as for other radiological examinations and subject to the same dollar limits, deductibles and coinsurance factors. For purposes of this section, "low-dose mammography" means the x-ray examination of the breast using equipment dedicated specifically for mammography, including the x-ray tube, filter, compression device, screens, films and cassettes with a radiation exposure which is diagnostically valuable and in keeping with the recommended "Average Patient Exposure Guides" as published by the Conference of Radiation Control Program Directors, Inc.

(3) Except for cancer policies, nothing in this section shall apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care or limited benefit health insurance policies.

SOURCES: Laws, 1998, ch. 483, § 3, eff from and after January 1, 1999.

§ 83-9-109. Outline of coverage.

(1) In order to provide for full and fair disclosure in the sale of Medicare supplement policies, no Medicare supplement policy or certificate shall be delivered in this state unless an outline of coverage is delivered to the applicant at the time application is made.

(2) The commissioner shall prescribe the format and content of the outline of coverage required by subsection (1). For purposes of this section, "format" means style, arrangement and overall appearance, including such items as the size, color and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(a) A description of the principal benefits and coverage provided in the policy;

(b) A statement of the renewal provisions including any reservation by the insurer of a right to change premiums and disclosure of any automatic renewal premium increases based on the policyholder's age;

(c) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(3) The commissioner may prescribe by regulation a standard form and the contents of an informational brochure for persons eligible for Medicare which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the commissioner may require by regulation that the informational brochure be provided to any prospective insureds eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by regulation that the prescribed brochure be provided upon request to any prospective insureds eligible for Medicare, but in no event later than the time of policy delivery.

(4) The commissioner may adopt regulations for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and health insurance policies sold to persons eligible for Medicare other than:

(a) Medicare supplement policies; or

(b) Disability income policies.

(5) The commissioner may adopt reasonable regulations to govern the full and fair disclosure of information in connection with the replacement of accident and health policies, subscriber contracts or certificates by persons eligible for Medicare.

SOURCES: Laws, 1981, ch. 433, § 5; Laws, 1992, ch. 337 § 6; Laws, 1996, ch. 321, § 3, eff from and after passage (approved March 17, 1996).

Editor's Note — Section 8 of Chapter 433, Laws of 1981, provides as follows: "SECTION 8. This act shall be effective on October 1, 1981, and shall apply to policies and subscriber contracts delivered or issued for delivery in this state after such later date as is specified in the regulations adopted by the commissioner."

RESEARCH REFERENCES

ALR. Insurer's duty, and effect of its failure, to provide insured or payee with copy of policy or other adequate documentation of its terms. 78 A.L.R.4th 9.

Am Jur. 70A Am. Jur. 2d, Social Security and Medicare §§ 2045, 2063, 2112, 2439.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 231-246.

§ 83-9-110. Review and approval of advertising by commissioner.

Every issuer of Medicare supplement insurance policies or certificates in this state shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio or television medium to the commissioner for review and approval.

SOURCES: Laws, 1992, ch. 337 § 7, eff from and after passage (approved April 20, 1992).

§ 83-9-111. Right to return policy or certificate.

Medicare supplement policies or certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

SOURCES: Laws, 1981, ch. 433, § 6; Laws, 1992, ch. 337 § 8, eff from and after passage (approved April 20, 1992).

Editor's Note — Section 8 of Chapter 433, Laws of 1981, provides as follows:

"SECTION 8. This act shall be effective on October 1, 1981, and shall apply to policies and subscriber contracts delivered or issued for delivery in this state after such later date as is specified in the regulations adopted by the commissioner."

RESEARCH REFERENCES

ALR. Insurer's duty, and effect of its failure, to provide insured or payee with copy of policy or other adequate documentation of its terms. 78 A.L.R.4th 9.

Am Jur. 70A Am. Jur. 2d, Social Security and Medicare §§ 2045, 2063, 2112, 2439.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 231-246.

§ 83-9-112. Penalty for issuers violating statutory provisions.

In addition to any other applicable penalties for violations of the insurance code, the commissioner may require issuers violating any provision of Sections 83-9-101 through 83-9-115 or regulations promulgated pursuant to Sections 83-9-101 through 83-9-115 to cease marketing any Medicare supplement policy or certificate in this state which is related directly or indirectly to a violation or may require such issuer to take such actions as are necessary to comply with the provisions of Sections 83-9-101 through 83-9-115, or both.

SOURCES: Laws, 1992, ch. 337 § 9, eff from and after passage (approved April 20, 1992).

Cross References — General penalty for violation of Mississippi insurance laws, see § 83-5-85.

§ 83-9-113. Regulations subject to administrative procedures law.

Regulations promulgated pursuant to Sections 83-9-101 through 83-9-113 shall be subject to the provisions of Chapter 43 of Title 25, Mississippi Code of 1972.

SOURCES: Laws, 1981, ch. 433, § 7, eff from and after October 1, 1981.

Editor's Note — Section 8 of Chapter 433, Laws of 1981, provides as follows:
"SECTION 8. This act shall be effective on October 1, 1981, and shall apply to policies and subscriber contracts delivered or issued for delivery in this state after such later date as is specified in the regulations adopted by the commissioner."
Cross References — Administrative procedures, see §§ 25-43-1.101 et seq.

RESEARCH REFERENCES

Am Jur. 70A Am. Jur. 2d, Social Security and Medicare §§ 2045, 2063, 2112, 2439.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 231-246.

§ 83-9-115. Effect of partial invalidity of provisions.

If any provision of Sections 83-9-101 through 83-9-115 or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of Sections 83-9-101 through 83-9-115 and the application of such provision to other persons or circumstances shall not be affected thereby.

SOURCES: Laws, 1992, ch. 337 § 10, eff from and after passage (approved April 20, 1992).

COMPREHENSIVE HEALTH INSURANCE RISK POOL ASSOCIATION

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§ 83-9-201. Short title.

Sections 83-9-201 through 83-9-222 shall be known and may be cited as the "Comprehensive Health Insurance Risk Pool Association Act."

SOURCES: Laws, 1991, ch. 593, § 1; reenacted, Laws, 1995, ch. 490, § 1; reenacted and amended, Laws, 1997, ch. 311, § 1, eff from and after July 1, 1997.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-9-203. Purpose.

It is the purpose of the Legislature to establish a mechanism to allow the availability of a health insurance program and to allow the availability of health and accident insurance coverage to those citizens of this state who (a) because of health conditions cannot secure such coverage, or (b) desire to obtain or continue health insurance coverage under any state or federal program designed to enable persons to obtain or maintain health insurance coverage.

SOURCES: Laws, 1991, ch. 593, § 2; reenacted, Laws, 1995, ch. 490, § 2; reenacted without change, Laws, 1997, ch. 311, § 2; Laws, 2009, ch. 385, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment added (b); and made a minor stylistic change.

§ 83-9-205. Definitions.

As used in Sections 83-9-201 through 83-9-222, the following words shall have the meaning ascribed herein unless the context clearly requires otherwise:

(a) "Association" means the Comprehensive Health Insurance Risk Pool Association.

(b) "Board" means the board of directors of the association.

(c) "Church plan" has the meaning given such term under Section 3(33) of the Employee Retirement Income Security Act of 1974.

(d) "Commissioner" means the Commissioner of Insurance of this state.

(e) "Creditable coverage" has the meaning set forth in the federal Health Insurance Portability and Accountability Act of 1996 (26 USCS Section 9801(c)(1)). A period of creditable coverage shall not be counted, with respect to the enrollment of an individual who seeks coverage under the plan, if, after such period and before the enrollment date, the individual experiences a significant break in coverage.

(f) "Dependent" means a resident spouse or resident unmarried child under the age of nineteen (19) years, a child who is a student under the age of twenty-three (23) years and who is financially dependent upon the parent or a child of any age who is disabled and dependent upon the parent.

(g) "Excess or stoploss coverage" means an arrangement whereby an insurer insures against the risk that any one (1) claim will exceed a specific dollar amount or that the entire loss of a self-insurance plan will exceed a specific amount.

(h) "Federally defined eligible individual" means an individual:

(i) For whom, as of the date on which the individual seeks coverage under the plan, the aggregate of the periods of creditable coverage is eighteen (18) or more months;

(ii) Whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan or health insurance coverage offered in connection with such a plan;

(iii) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (Medicare), or a state plan under Title XIX of the act (Medicaid) or any successor program, and who does not have other health insurance coverage;

(iv) With respect to whom the most recent coverage within the period of aggregate creditable coverage was not terminated based on a factor relating to nonpayment of premiums or fraud;

(v) Who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected this coverage; and

(vi) Who has exhausted continuation coverage under this provision or program, if the individual elected the continuation coverage described in subparagraph (v).

(i) "Governmental plan" has the meaning given such term under Section 3(32) of the Employee Retirement Income Security Act of 1974 and any federal governmental plan.

(j) "Group health plan" means an employee welfare benefit plan as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement or otherwise.

(k) "Health insurance coverage" means any hospital and medical expense incurred policy, nonprofit health care services plan contract, health maintenance organization subscriber contract or any other health care plan or arrangement that pays for or furnishes medical or health care services whether by insurance or otherwise.

(i) "Health insurance coverage" shall not include one or more, or any combination of, the following:

1. Coverage only for accident, or disability income insurance, or any combination thereof;

2. Coverage issued as a supplement to liability insurance;

3. Liability insurance, including general liability insurance and automobile liability insurance;

4. Workers' compensation or similar insurance;

5. Automobile medical payment insurance;

6. Credit-only insurance;

7. Coverage for on-site medical clinics; and

8. Other similar insurance coverage, specified in federal regulations issued pursuant to Public Law 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits.

(ii) "Health insurance coverage" shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the coverage:

1. Limited scope dental or vision benefits;

2. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or

3. Other similar, limited benefits specified in federal regulations issued pursuant to Public Law 104-191.

(iii) "Health insurance coverage" shall not include the following benefits if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:

1. Coverage only for a specified disease or illness; or

2. Hospital indemnity or other fixed indemnity insurance.

(iv) "Health insurance coverage" shall not include the following if offered as a separate policy, certificate or contract of insurance:

1. Medicare supplemental health insurance as defined under Section 1882(g)(1) of the Social Security Act;

2. Coverage supplemental to the coverage provided under Chapter 55, Title 10, United States Code (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); or

3. Similar supplemental coverage provided to coverage under a group health plan.

(*l*) "Health maintenance organization" means any organization authorized under the Health Maintenance Organization, Preferred Provider Organization and Other Prepaid Health Benefit Plans Protection Act, Section 83-41-301 et seq., to operate a health maintenance organization in this state.

(m) "Insurer" means any entity that is authorized in this state to write health insurance coverage or that provides health insurance coverage in this state or any third-party administrator. For the purposes of Sections 83-9-201 through 83-9-222, insurer includes an insurance company, nonprofit health care services plan, fraternal benefit society, health maintenance organization, to the extent consistent with federal law any self-insurance arrangement covered by the Employee Retirement Income Security Act of 1974, as amended, that provides health care benefits in this state, any other entity providing a plan of health insurance coverage or health benefits subject to state insurance regulation and any reinsurer reinsuring health insurance coverage in this state.

(n) "Medicare" means coverage under both Parts A or B of Title XVIII of the Social Security Act, 42 USC, Section 1395 et seq., as amended.

(o) "Plan" means the health insurance plan adopted by the board under Sections 83-9-201 through 83-9-222.

(p) "Resident" means an individual who is legally located in the United States and has been legally domiciled in this state for a period to be established by the board and subject to the approval of the commissioner but in no event shall such residency requirement be greater than one (1) year, except that for a federally defined eligible individual, there shall not be a prior residency requirement.

(q) "Agent" means a person who is licensed to sell health insurance in this state or a third-party administrator.

(r) "Covered person" means any individual resident of this state (excluding dependents) who is eligible to receive benefits from any insurer.

(s) "Third-party administrator" means any entity who is paying or processing health insurance claims for any Mississippi resident.

(t) "Reinsurer" means any insurer from whom any person providing health insurance coverage for any Mississippi resident procures insurance for itself in the insurer, with respect to all or part of the health insurance coverage risk of the person.

(u) "Significant break in coverage" means a period of sixty-three (63) consecutive days during all of which the individual does not have any creditable coverage, except that neither a waiting period nor an affiliation period is taken into account in determining a significant break in coverage.

SOURCES: Laws, 1991, ch. 593, § 3; Laws, 1995, ch. 490, § 3; reenacted and amended, Laws, 1997, ch. 311, § 3; Laws, 2009, ch. 385, § 2, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment rewrote the section.

Cross References — Medicare supplement insurance, see §§ 83-9-101 et seq.

Federal Aspects — Chapter 55 of Title 10 of the U.S. Code (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)) is codified as 10 USCS §§ 1071 et seq.

Employee Retirement Income Security Act generally, see 29 USCS §§ 1001 et seq.

Sections 3(1), (32) and (33) of the Employee Retirement Income Security Act are codified as 29 USCS § 1002(1), (32) and (33), respectively.

Parts A and B of Title XVIII of the Social Security Act are codified as 42 USCS §§ 1395c through 1395w-4.

Section 1882(g)(1) of the Social Security Act is codified as 42 USCS § 1395ss(g)(1).

Title XIX of the Social Security Act is codified as 42 USCS §§ 1396 et seq.

RESEARCH REFERENCES

Practice References. Business Law Monographs, Volume IN2 — Casualty and Liability Insurance (Matthew Bender).

§ 83-9-207. Participation by insurers; availability of policies for sale.

(1) Every insurer shall participate in the association.

(2) The requirements of this plan shall become effective April 15, 1991. The policies shall be available for sale January 1, 1992.

SOURCES: Laws, 1991, ch. 593, § 4; reenacted, Laws, 1995, ch. 490, § 4; reenacted without change, Laws, 1997, ch. 311, § 4, eff from and after July 1, 1997.

§ 83-9-209. Eligibility for coverage; maximum lifetime benefits; termination of coverage; unfair trade practice by insurers, agents or brokers, or employers.

(1) Any individual who is and continues to be a resident shall be eligible for coverage under this plan if evidence is provided of:

(a) A notice of rejection or refusal to issue substantially similar insurance for health reasons by one (1) insurer;

(b) A refusal by an insurer to issue insurance except with material underwriting restriction; or

(c) A refusal by an insurer to issue insurance except at a rate exceeding the plan rate.

(2) A federally defined eligible individual who has not experienced a significant break in coverage and who is and continues to be a resident shall be eligible for plan coverage.

(3) The board shall develop a procedure for eligibility for coverage by the association for any natural person who changes his domicile to this state and

who at the time domicile is established in this state is insured by an organization similar to the association. The eligible maximum lifetime benefits for such covered person shall not exceed the lifetime benefits available through the association, less any benefits received from a similar organization in the former domiciliary state.

(4) The board shall promulgate a list of medical or health conditions for which a person shall be eligible for plan coverage without applying for health insurance coverage under subsection (1) of this section. Persons who can demonstrate the existence or history of any medical or health conditions on the list promulgated by the board shall not be required to provide the evidence specified in subsection (1) of this section. The list may be amended by the board from time to time as may be appropriate.

(5) A person shall not be eligible for coverage under this plan if:

(a) The person has or obtains health insurance coverage substantially similar to or more comprehensive than a plan policy, or would be eligible to have coverage if the person elected to obtain it; except that:

(i) A person may maintain other coverage for the period of time the person is satisfying a preexisting condition waiting period under a plan policy; and

(ii) A person may maintain plan coverage for the period of time the person is satisfying a preexisting condition waiting period under another health insurance policy intended to replace the plan policy.

(b) The person is determined to be eligible for health care benefits under the Mississippi Medicaid Law, Section 43-13-101 et seq. or Medicare.

(c) The person previously terminated plan coverage unless twelve (12) months have elapsed since the person's latest termination, except that this paragraph (c) shall not apply with respect to an applicant who is a federally defined eligible individual.

(d) The plan has paid out One Million Dollars ($1,000,000.00) in benefits on behalf of the person. The lifetime maximum shall be One Million Dollars ($1,000,000.00).

(e) The person is an inmate or resident of a public institution.

(f) The person's premiums are paid for or reimbursed under any government sponsored program or by any government agency or health care provider, except as an otherwise qualifying full-time employee, or dependent thereof, of a government agency or health care provider.

(6) The coverage of any person shall cease:

(a) On the date a person is no longer a resident of this state;

(b) Upon the death of the covered person;

(c) On the date state law requires cancellation of the policy; or

(d) At the option of the association, thirty (30) days after the association makes any inquiry concerning the person's eligibility or place of residence to which the person does not reply.

(7) The coverage of any person who ceases to meet the eligibility requirements of this section may be terminated immediately.

(8) It shall constitute an unfair trade practice for any insurer, insurance agent or broker, employer or third-party administrator to refer an individual

employee or a dependent of an individual employee to the association, or to arrange for an individual employee or a dependent of an individual employee to apply to the program, for the purpose of separating such employee or dependent from a group health benefits plan provided in connection with the employee's employment.

SOURCES: Laws, 1991, ch. 593, § 5; Laws, 1995, ch. 490, § 5; reenacted and amended, Laws, 1997, ch. 311, § 5; Laws, 2009, ch. 385, § 3, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment added (2); redesignated former (2) through (7) as present (3) through (8); and in (5), added "or Medicare" at the end of (b), added "except that this paragraph (c)...defined eligible individual" at the end of (c), and substituted "One Million Dollars ($1,000.000.00)" for "Five Hundred Thousand Dollars ($500,000.00)" twice in (d).

Federal Aspects — Medicare, Title XVIII of the Social Security Act, is codified as 42 USCS §§ 1395 et seq.

§ 83-9-211. Creation of association; membership; board of directors; adoption of plan, articles, bylaws and operating rules.

(1) There is created a nonprofit legal entity to be known as the "Comprehensive Health Insurance Risk Pool Association." All insurers, as a condition of doing business, shall be members of the association.

(2)(a) The association shall operate subject to the supervision and approval of a nine-member board of directors consisting of:

(i) Four (4) members appointed by the Insurance Commissioner. Two (2) of the commissioner's appointees shall be chosen from the general public and shall not be associated with the medical profession, a hospital or an insurer. One (1) appointee shall be representative of medical providers. One (1) appointee shall be representative of health insurance agents. Any board member appointed by the commissioner may be removed and replaced by him at any time without cause.

(ii) Three (3) members appointed by the participating insurers, at least one (1) of whom is a domestic insurer.

(iii) The Chair of the Senate Insurance Committee and the Chair of the House Insurance Committee, or their designees, who shall be nonvoting, ex officio members of the board.

(iv) Of those members appointed by the Insurance Commissioner, one (1) shall serve for a term of one (1) year, two (2) for a term of two (2) years, and one (1) for a term of three (3) years. Of those members appointed by the participating insurers, one (1) shall serve for a term of one (1) year, one (1) shall serve for a term of two (2) years, and one (1) shall serve for a term of three (3) years. The appointing authority shall designate the period of service of each initial appointee at the time of appointment.

(v) All terms after the initial term shall be for a period of three (3) years.

(b) The board of directors shall elect one (1) of its members as chairman.

(c) Board members may be reimbursed from monies of the association for actual and necessary expenses incurred by them as members in the manner and amount provided in Section 25-3-41, Mississippi Code of 1972, but shall not otherwise be compensated for their services.

(3) The association shall adopt a plan in accordance with Sections 83-9-201 through 83-9-222 and submit its articles, bylaws and operating rules to the State Department of Insurance for approval. If the association fails to adopt such plan and suitable articles, bylaws and operating rules within ninety (90) days after the appointment of the board, the State Department of Insurance shall adopt rules to effectuate the provisions of Sections 83-9-201 through 83-9-222; and such rules shall remain in effect until superseded by a plan and articles, bylaws and operating rules submitted by the association and approved by the State Department of Insurance.

(4) Individual board members shall not be liable and shall be immune from suit at law or equity for any conduct performed in good faith and which is within the subject matter over which they have been given jurisdiction.

SOURCES: Laws, 1991, ch. 593, § 6; Laws, 1995, ch. 490, § 6; reenacted and amended, Laws, 1997, ch. 311, § 6; Laws, 2009, ch. 385, § 4, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted “at least one (1) of whom is a domestic insurer” for “at least two (2) of whom are domestic insurers” in (2)(a)(ii).

§ 83-9-212. Liability of board, employees, insurers, association, etc. for obligations of association or acts or omissions; indemnification and representation of board and employees.

Neither the board nor its employees shall be liable for any obligations of the association. There shall be no liability on the part of and no cause of action shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors or the commissioner or his representatives for any action or omission by them in the performance of their powers and duties under Sections 83-9-201 through 83-9-222. The board may provide in its bylaws or rules for indemnification of, and legal representation for, its members and employees.

SOURCES: Laws, 1995, ch. 490, § 7; reenacted and amended, Laws, 1997, ch. 311, § 7, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 40 Am. Jur. 2d, Hospitals and Asylums §§ 6-13, 14-45.

CJS. 41 C.J.S., Hospitals §§ 11-14, 18-32, 33-43.

§ 83-9-213. General powers and duties of association; liability of Commissioner of Insurance, administrator, board of directors, etc.; powers and duties of Department of Insurance.

(1) The association shall:

(a) Establish administrative and accounting procedures for the operation of the association.

(b) Establish procedures under which applicants and participants in the plan may have grievances reviewed by an impartial body and reported to the board.

(c) Select an administering insurer in accordance with Section 83-9-215.

(d) Collect the assessments provided in Section 83-9-217 from insurers and third-party administrators for claims paid under the plan and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made. The level of payments shall be established by the board. Assessments shall be collected pursuant to the plan of operation approved by the board. In addition to the collection of such assessments, the association shall collect an organizational assessment or assessments from all insurers as necessary to provide for expenses which have been incurred or are estimated to be incurred prior to receipt of the first calendar year assessments. Organizational assessments shall be equal in amount for all insurers, but shall not exceed One Hundred Dollars ($100.00) per insurer for all such assessments. Assessments are due and payable within thirty (30) days of receipt of the assessment notice by the insurer.

(e) Require that all policy forms issued by the association conform to standard forms developed by the association. The forms shall be approved by the State Department of Insurance.

(f) Develop and implement a program to publicize the existence of the plan, the eligibility requirements for the plan, and the procedures for enrollment in the plan and to maintain public awareness of the plan.

(2) The association may:

(a) Exercise powers granted to insurers under the laws of this state.

(b) Take any legal actions necessary or proper for the recovery of any monies due the association under Sections 83-9-201 through 83-9-222. There shall be no liability on the part of and no cause of action of any nature shall arise against the Commissioner of Insurance or any of his staff, the administrator, the board or its directors, agents or employees, or against any participating insurer for any actions performed in accordance with Sections 83-9-201 through 83-9-222.

(c) Enter into contracts as are necessary or proper to carry out the provisions and purposes of Sections 83-9-201 through 83-9-222, including the authority, with the approval of the commissioner, to enter into contracts with similar organizations of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions.

(d) Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessments due the association.

(e) Take any legal actions necessary to:

(i) Avoid the payment of improper claims against the association or the coverage provided by or through the association.

(ii) Recover any amounts erroneously or improperly paid by the association.

(iii) Recover any amounts paid by the association as a result of mistake of fact or law.

(iv) Recover other amounts due the association.

(f) Establish, and modify from time to time as appropriate, rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas and any other actuarial function appropriate to the operation of the association. Rates and rate schedules may be adjusted for appropriate factors such as age, sex and geographic variation in claim cost and shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices.

(g) Issue policies of insurance in accordance with the requirements of Sections 83-9-201 through 83-9-222.

(h) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the plan, policy and other contract design, and any other function within the authority of the association.

(i) Borrow money to effect the purposes of the association. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for insurers and may be carried as admitted assets.

(j) Establish rules, conditions and procedures for reinsuring risks of member insurers desiring to issue plan coverages to individuals otherwise eligible for plan coverages in their own name. Provision of reinsurance shall not subject the association to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers.

(k) Prepare and distribute application forms and enrollment instruction forms to insurance producers and to the general public.

(*l*) Provide for reinsurance of risks incurred by the association.

(m) Issue additional types of health insurance policies to provide optional coverages, including Medicare supplemental health insurance.

(n) Provide for and employ cost containment measures and requirements including, but not limited to, disease management programs and incentives for participation therein, preadmission screening, second surgical opinion, concurrent utilization review and individual case management for the purpose of making the benefit plan more cost effective.

(o) Design, utilize, contract or otherwise arrange for the delivery of cost effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations and other limited network provider arrangements.

(p) Serve as a mechanism to provide health and accident insurance coverage to citizens of this state under any state or federal program designed to enable persons to obtain or maintain health insurance coverage.

(3) The commissioner may, by rule, establish additional powers and duties of the board and may adopt such rules as are necessary and proper to implement Sections 83-9-201 through 83-9-222.

(4) The State Department of Insurance shall examine and investigate the association and make an annual report to the Legislature thereon. Upon such investigation, the Commissioner of Insurance, if he deems necessary, shall require the board: (a) to contract with an outside independent actuarial firm to assess the solvency of the association and for consultation as to the sufficiency and means of the funding of the association, and the enrollment in and the eligibility, benefits and rate structure of the benefits plan to ensure the solvency of the association; and (b) to close enrollment in the benefits plan at any time upon a determination by the outside independent actuarial firm that funds of the association are insufficient to support the enrollment of additional persons. In no case shall the commissioner require such actuarial study any less than once every two (2) years.

SOURCES: Laws, 1991, ch. 593, § 7; Laws, 1995, ch. 490, § 8; reenacted and amended, Laws, 1997, ch. 311, § 8; Laws, 2009, ch. 385, § 5, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment, in (2), substituted "supplemental" for "supplement" in (m), inserted "disease management programs and incentives for participation therein" in (n), and added (p).

§ 83-9-215. Selection of plan administrator; term, powers and duties, and compensation of administrator.

(1) The board shall select an insurer, through a competitive bidding process, to administer the plan. The board shall evaluate bids submitted under this subsection based on criteria established by the board, which criteria shall include:

(a) The insurer's proven ability to handle large group accident and health insurance.

(b) The efficiency of the insurer's claims-paying procedures.

(c) An estimate of total charges for administering the plan.

(2) The administering insurer shall serve for a period of three (3) years. At least one (1) year prior to the expiration of each three-year period of service by an administering insurer, the board shall invite all insurers, including the current administering insurer, to submit bids to serve as the administering insurer for the succeeding three-year period. The selection of the administering insurer for the succeeding period shall be made at least six (6) months prior to the end of the current three-year period.

(3) The administering insurer shall:

(a) Perform all eligibility and administrative claims-payment functions relating to the plan.

(b) Pay an agent's referral fee as established by the board to each insurance agent who refers an applicant to the plan, if the applicant's application is accepted. The selling or marketing of plans shall not be limited to the administering insurer or its agents. The referral fees shall be paid by the administering insurer from monies received as premiums for the plan.

(c) Establish a premium-billing procedure for collection of premiums from insured persons. Billings shall be made periodically as determined by the board.

(d) Perform all necessary functions to assure timely payment of benefits to covered persons under the plan, including:

(i) Making available information relating to the proper manner of submitting a claim for benefits under the plan and distributing forms upon which submissions shall be made.

(ii) Evaluating the eligibility of each claim for payment under the plan.

(iii) Notifying each claimant within forty-five (45) days after receiving a properly completed and executed proof of loss whether the claim is accepted, rejected or compromised.

(iv) The board shall establish reasonable reimbursement amounts for any services covered under the benefit plans.

(e) Submit regular reports to the board regarding the operation of the plan. The frequency, content and form of the reports shall be as determined by the board.

(f) Following the close of each calendar year, determine net premiums, reinsurance premiums less administrative expense allowance, the expense of administration pertaining to the reinsurance operations of the association, and the incurred losses of the year and report this information to the association and the State Department of Insurance.

(g) Pay claims expenses. If the payments by the administering insurer for claims expenses exceed the portion of premiums allocated by the board for payment of claims expenses, the board shall provide the administering insurer with additional funds for payment of claims expenses.

(4)(a) The administering insurer shall be paid, as provided in the contract of the association, for its direct and indirect expenses incurred in the performance of its services.

(b) As used in this subsection, the term "direct and indirect expenses" includes that portion of the audited administrative costs, printing expenses, claims administration expenses, management expenses, building overhead expenses and other actual operating and administrative expenses of the administering insurer which are approved by the board as allocable to the administration of the plan and included in the bid specifications.

SOURCES: Laws, 1991, ch. 593, § 8; Laws, 1995, ch. 490, § 9; reenacted without change, Laws, 1997, ch. 311, § 9; Laws, 2009, ch. 385, § 6, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment deleted "from the premium payments received from or on behalf of covered persons under the plan" from the end of the first sentence of (3)(g).

Cross References — General powers and duties of association, see § 83-9-213.

§ 83-9-217. Assessments against insurers.

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty (30) days after prior written notice to the member insurers and shall accrue interest at twelve percent (12%) per annum on and after the due date.

(2) Each insurer shall be assessed an amount not to exceed Three Dollars ($3.00) per covered person insured or reinsured by each insurer per month. There shall not be such assessment on any insurer on policies or contracts insuring federal or state employees.

(3) The board shall make reasonable efforts designed to ensure that each covered person is counted only once with respect to any assessment. For that purpose, the board shall require each insurer that obtains excess or stoploss insurance to include in its count of covered persons all individuals whose coverage is insured (including by way of excess or stoploss coverage) in whole or part. The board shall allow a reinsurer to exclude from its number of covered persons those who have been counted by the primary insurer or by the primary reinsurer or primary excess or stoploss insurer for the purpose of determining its assessment under this subsection.

(4) Each insurer's assessment may be verified by the board based on annual statements and other reports deemed to be necessary by the board. The board may use any reasonable method of estimating the number of covered persons of an insurer if the specific number is unknown.

(5) If assessments and other receipts by the association, board or administering insurer exceed the actual losses and administrative expenses of the plan, the excess shall be held at interest and used by the board to offset future losses or to reduce plan premiums.

As used in this subsection, the term "future losses" includes reserves for claims incurred but not reported.

(6) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment or otherwise file any report or furnish information required to be filed with the board pursuant to the board's direction that the board determines is necessary in order for the board to perform its duties under this section. As an alternative, the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than One Hundred Dollars ($100.00) per month.

SOURCES: Laws, 1991, ch. 593, § 9; Laws, 1995, ch. 490, § 10; reenacted without change, Laws, 1997, ch. 311, § 10; Laws, 2002, ch. 564, § 1; Laws, 2009, ch. 385, § 7, eff from and after July 1, 2009.

Amendment Notes — The 2002 amendment substituted "Three Dollars ($3.00)" for "One Dollar ($1.00)" in (2).

The 2009 amendment added "or otherwise file any report…in order for the board to perform its duties under this section" at the end of the first sentence of (6).

Cross References — General powers and duties of association, see § 83-9-213.

ATTORNEY GENERAL OPINIONS

Insurers of municipal employees are not exempt from the one dollar assessment per covered person per month imposed by statute. Ellis, May 8, 1992, A.G. Op. #92-0342.

RESEARCH REFERENCES

ALR. Requirement that multicoverage umbrella insurance policy offer uninsured-or underinsured-motorist coverage equal to liability limits under umbrella provisions. 52 A.L.R.5th 451.

§ 83-9-219. Insurance of plan coverage; issuance of policies.

The coverage provided by the plan shall be directly insured by the association, and the policies shall be issued through the administering insurer.

SOURCES: Laws, 1991, ch. 593, § 10; reenacted, Laws, 1995, ch. 490, § 11; reenacted without change, Laws, 1997, ch. 311, § 11, eff from and after July 1, 1997.

§ 83-9-221. Coverage; rates; exclusion for preexisting conditions; certain individuals excepted from exclusion; other sources primary.

(1) **Coverage offered.** —

(a) The plan shall offer in an annually renewable policy the coverage specified in this section for each eligible person.

(b) If an eligible person is also eligible for Medicare coverage, the plan shall not pay or reimburse any person for expenses paid by Medicare.

(c) Any person whose health insurance coverage is involuntarily terminated for any reason other than nonpayment of premium may apply for coverage under the plan. If such coverage is applied for within sixty-three (63) days after the involuntary termination and if premiums are paid for the entire period of coverage, the effective date of the coverage shall be the date of termination of the previous coverage.

(2) **Major medical expense coverage.** — The plan shall offer major medical expense coverage to every eligible person who is not eligible for Medicare. The coverage to be issued by the plan, its schedule of benefits, exclusions and other limitations shall be established by the board and may be amended from time to time subject to the approval of the commissioner.

(3) In establishing the plan coverage, the board shall take into consideration the levels of health insurance coverage provided in the state and medical economic factors as may be deemed appropriate; and promulgate benefit levels, deductibles, coinsurance factors, exclusions and limitations determined to be generally reflective of and commensurate with health insurance coverage provided through a representative number of large employers in the state.

(4) Rates for coverages issued by the association may not be unreasonable in relation to the benefits provided, the risk experience and the reasonable expenses of providing the coverage.

(a) Separate schedules of premium rates based on age may apply for individual risks.

(b) Rates are subject to approval by the State Department of Insurance.

(c) Standard risk rates for coverages issued by the association shall be established by the association, subject to approval by the department, using reasonable actuarial techniques, and shall reflect anticipated experiences and expenses of such coverages for standard risks.

(d) The rating plan established by the association shall initially provide for rates equal to one hundred fifty percent (150%) of the average standard risk rates. Any changes in the initial rates shall be based on experience of the plan and shall reflect reasonably anticipated losses and expenses.

(e) No rate shall exceed one hundred seventy-five percent (175%) of the standard risk rate.

(5) **Preexisting conditions.** —

(a) An association policy may contain provisions under which coverage is excluded during a period of twelve (12) months following the effective date of coverage with respect to a given covered individual for any preexisting condition, as long as:

(i) The condition manifested itself within a period of six (6) months before the effective date of coverage;

(ii) Medical advice or treatment was recommended or received within a period of six (6) months before the effective date of coverage.

(b) No preexisting condition exclusion shall be applied to a federally defined eligible individual.

(6) **Other sources primary.** —

(a) The association shall be payer of last resort of benefits whenever any other benefit or source of third-party payment is available. The coverage provided by the association shall be considered excess coverage, and benefits otherwise payable under association coverage shall be reduced by all amounts paid or payable through any other health insurance coverage and by all hospital and medical expense benefits paid or payable under any workers' compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable by any insurer or insurance arrangement or any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program.

(b) No amounts paid or payable by Medicare or any other governmental program or any other insurance, or self-insurance maintained in lieu of otherwise statutorily required insurance, may be made or recognized as claims under such policy or be recognized as or towards satisfaction of applicable deductibles or out-of-pocket maximums or to reduce the limits of benefits available.

(c) The association shall have a cause of action against a participant for the recovery of the amount of any benefits paid to the participant which should not have been claimed or recognized as claims because of the provisions of this subsection or because otherwise not covered. Benefits due from the association may be reduced or refused as a setoff against any amount recoverable under this paragraph.

SOURCES: Laws, 1991, ch. 593, § 11; Laws, 1995, ch. 490, § 12; reenacted and amended, Laws, 1997, ch. 311, § 12; Laws, 2009, ch. 385, § 8, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment inserted "coverage" following "health insurance" both times it appears in (3); in (5), added (b), designated the formerly undesignated first paragraph as present (a), and redesignated former (a) and (b) as present (i) and (ii); and in (6)(a), inserted "coverage" following "health insurance," and deleted "short-term, accident, dental-only, vision-only, fixed indemnity, limited benefit or credit insurance, coverage issued as a supplement to liability insurance" preceding "workers' compensation coverage."

RESEARCH REFERENCES

ALR. Construction and application of provision in health or hospitalization policy excluding or postponing coverage of illness originating prior to issuance of policy or within stated time. 94 A.L.R.3d 990.

Applicability of other insurance benefits exclusion from coverage of hospital or health and accident policy to governmental insurance benefits to which insured would have been entitled by prior subscription. 29 A.L.R.4th 361.

§ 83-9-222. Actions against association or members based upon joint or collective actions.

Neither the participation in the association as member insurers, the establishment of rates, forms or procedures nor any other joint or collective action required by Sections 83-9-201 through 83-9-222 shall be the basis of any legal action, criminal or civil liability or penalty against the association or any member insurer.

SOURCES: Laws, 1995, ch. 490, § 14; reenacted and amended, Laws, 1997, ch. 311, § 13, eff from and after July 1, 1997.

§ 83-9-223. Repealed.

Repealed by Laws, 1997, ch. 311, § 14, eff from and after July 1, 1997. [Laws, 1991, ch. 593, § 12; Laws, 1995, ch. 490, § 13]

Editor's Note — Former § 83-9-223 provided for the repeal of the Comprehensive Health Insurance Risk Pool Association Act, §§ 83-9-201 through 83-9-223.

BASIC GROUP HEALTH INSURANCE FOR SMALL BUSINESS

Sec.
83-9-301. Repealed.
83-9-303. Basic group health insurance policy offered to employers of small numbers of employees.

§ 83-9-301. Repealed.

Repealed by Laws, 1994, ch. 329, § 2, eff from and after July 1, 1994. [Laws, 1992, ch. 541, § 1]

Editor's Note — Former § 83-9-301 was entitled: Legislative findings and intent. Laws of 1992, ch. 541, § 3, provided for the repeal of this section effective July 1, 1994. Subsequently Laws of 1994, ch. 329, § 3, repealed Laws of 1992, ch. 541, § 3.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-9-303. Basic group health insurance policy offered to employers of small numbers of employees.

(1) A basic group health insurance policy shall be offered to employers of fewer than twenty-five (25) employees. Such a basic group health policy shall provide coverage for hospital expenses and services rendered by a physician licensed by this state, but is not subject to the requirements of state mandated benefit for health insurance.

(2) Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, benefits in excess of the basic coverage authorized herein. Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(3) All forms, policies and contracts shall be submitted for approval to the Commissioner of Insurance, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

SOURCES: Laws, 1992, ch. 541, § 2; reenacted, 1994, ch. 329, § 1, eff from and after July 1, 1994.

Editor's Note — Laws of 1992, ch. 541, § 3, provided for the repeal of this section effective July 1, 1994. Subsequently Laws of 1994, ch. 329, § 3, repealed Laws of 1992, ch. 541, § 3.

CHAPTER 11

Automobile Insurance

Article 1. Cancellation or Nonrenewal of Policy 83-11-1
Article 3. Uninsured Motorist Coverage 83-11-101
Article 5. Automobile Club Services 83-11-201
Article 7. Towing and Storage of Disabled Vehicles 83-11-301
Article 9. Repairs to Damaged Vehicles 83-11-501
Article 11. Payment of Claims 83-11-551

Cross References — Exclusion of legal services provided under automobile liability insurance policy from provisions relating to legal expense insurance, see § 83-49-5.

ARTICLE 1.

CANCELLATION OR NONRENEWAL OF POLICY.

Sec.
83-11-1. Definitions.
83-11-3. Grounds for cancellation and exceptions.
83-11-5. Notice of cancellation.
83-11-7. Non-renewal.
83-11-9. Proof of notice.
83-11-11. Notice of insured's eligibility for assigned risk plan.
83-11-13. Written statement of reasons for cancellation.
83-11-15. Liability for statement of reasons for cancellation.
83-11-17. Appeal from cancellation or nonrenewal.
83-11-19. Hearing and order of commissioner.
83-11-21. Judicial appeals from commissioner's decisions.

§ 83-11-1. Definitions.

As used in this article:

(a) "Policy" means an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof, delivered or issued for delivery in this state, insuring a single individual, or husband and wife resident of the same household, as named insured and under which the insured vehicles therein designated are of the following types only:

(1) A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others; or

(2) Any other four-wheel motor vehicle with a load capacity of fifteen hundred (1,500) pounds or less which is not used in the occupation, profession, or business of the insured; provided, however, that this article shall not apply (i) to any policy issued under an automobile assigned risk plan, (ii) to any policy insuring more than four (4) automobiles, or (iii) to any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

(b) "Automobile liability coverage" includes only coverage of bodily injury and property damage liability, medical payments, and uninsured motorist coverage.

(c) "Automobile physical damage coverage" includes all coverage of loss or damage to an automobile insured under the policy except loss or damage resulting from collision or upset.

(d) "Automobile collision coverage" includes all coverage of loss or damage to an automobile insured under the policy resulting from collision or upset.

(e) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate of notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than six (6) months shall for the purpose of this article be considered as if written for a policy period or term of six (6) months. Any policy written for a term longer than one (1) year or any policy with no fixed expiration date shall, for the purpose of this article, be considered as if written for successive policy periods or terms of one (1) year; and such policy may be terminated at the expiration of any annual period upon giving thirty (30) days' notice of cancellation prior to such anniversary date. Such cancellation shall not be subject to any other provisions of this article.

(f) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on a policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agents or indirectly under any premium finance plan or extension of credit.

SOURCES: Codes, 1942, § 5670.8-101; Laws, 1970, ch. 450, § 1, eff 90 days after passage (approved April 2, 1970).

JUDICIAL DECISIONS

1. Nonrenewal held proper.

In a declaratory judgment action filed by an insurer, as the policy unambiguously required that the premium payment had to be in the insurer's possession by a certain date, and it was undisputed that it never received the payment (though appellant claimed it was sent), the trial court properly granted the insurer summary judgment and found there was no coverage. Lynch v. Miss. Farm Bureau Cas. Ins. Co., 880 So. 2d 1065 (Miss. Ct. App. 2004).

In a declaratory judgment action filed by an insurer alleging that there was no coverage because the insurer had not received a premium payment, appellants' estoppel defense, based on the insurer's alleged failure to send a termination notice, failed, and the insurer was properly granted summary judgment; appellant could not have relied on the insurer's previous notice of termination letters because her husband, who made the payments, testified that he was never late with a premium payment. Lynch v. Miss. Farm Bureau Cas. Ins. Co., 880 So. 2d 1065 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

Practice References. Automobile Insurance Step-Down Provisions (LexisNexis).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

ALR. Limitation of amount of coverage under automobile liability policy as affected by fact that policy covers more than one vehicle. 37 A.L.R.3d 1263.

Construction and application of provision of automobile liability policy expressly excluding from coverage liability arising from actions between fellow employees. 45 A.L.R.3d 288.

What constitutes "trailer" within coverage or exclusion provision of automobile liability policy. 65 A.L.R.3d 804.

"Vehicle" or "land vehicle" within meaning of insurance policy provision defining risks covered or excepted. 65 A.L.R.3d 824.

Insured's right to bring direct action against insurer for uninsured motorist benefits. 73 A.L.R.3d 632.

Who is "named insured" within meaning of automobile insurance. 91 A.L.R.3d 1280.

Necessity or permissibility of naming no-fault insurer as defendant where insured automobile owner or operator is not liable for economic losses under no-fault insurance law. 40 A.L.R.4th 858.

Injury or death caused by assault as within coverage of no-fault motor vehicle insurance. 44 A.L.R.4th 1010.

Who is "employed or engaged in the automobile business" within exclusionary clause of liability policy. 55 A.L.R.4th 261.

What constitutes "motor vehicle" for purposes of no-fault insurance. 73 A.L.R.4th 1053.

Validity, construction, and application of provision in automobile liability policy excluding from coverage injury to, or death of, employee of insured. 43 A.L.R.5th 149.

Conflict of laws in determination of coverage under automobile liability insurance policy. 110 A.L.R.5th 465.

Am Jur. 7 Am. Jur. 2d, Automobile Insurance § 1.

CJS. 44 C.J.S., Insurance § 59.

Law Reviews. Insurance: Enforceability of Automobile Business Exclusion to Automobile Liability Coverage. 53 Miss. L. J. 205, March 1983.

§ 83-11-3. Grounds for cancellation and exceptions.

(1) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

(a) nonpayment of premium;

(b) the driver's license or motor vehicle registration of the named insured, or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy, has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date, unless within seven (7) days from the date of any such cancellation or suspension, the insured shall give insurer written notice of such revocation or suspension and shall direct the insurer to exclude from coverage under said policy the person whose license was so suspended or revoked; further use of the insured vehicle by an excluded driver shall be grounds for immediate cancellation of a policy; or

(c) failure to make timely payment of dues to, or to maintain membership in good standing with, a designated association, corporation, or other organization where the original issue of such policy or renewal was dependent upon such membership.

(2) This section shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy.

(3) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding One Hundred Dollars ($100.00) shall not be deemed a cancellation of the coverage or of the policy.

(4) This section shall not apply to nonrenewal.

SOURCES: 1942, § 5670.8-102; Laws, 1970, ch. 450, § 2, eff 90 days after passage (approved April 2, 1970).

JUDICIAL DECISIONS

1. In general.

Sixty-day limit on cancellation of automobile insurance policy by insurer does not affect insurer's right to seek rescission for alleged misrepresentations by insured prior to issuance of policy. Chapman v. Safeco Ins. Co. of Am., 722 F. Supp. 285 (N.D. Miss. 1989).

RESEARCH REFERENCES

ALR. State regulation of insurer's nonacceptance, cancellation, or nonrenewal of, or increase in rate on, automobile insurance policy, based on driving record. 36 A.L.R.4th 1205.

Validity and construction of automobile insurance provision or statute automatically terminating coverage when insured obtains another policy providing similar coverage. 61 A.L.R.4th 1130.

Am Jur. 7 Am. Jur. 2d, Automobile Insurance §§ 8-10.

3 Am. Jur. Legal Forms 2d, Automobile Insurance §§ 32:11 et seq. (cancellation and nonrenewal).

10 Am. Jur. Proof of Facts 3d 483, Ineffective Cancellation of Automobile Insurance Policy-Deficient Communication of Cancellation Notice.

11 Am. Jur. Proof of Facts 3d 131, Ineffective Cancellation of Automobile Insurance Policy-Deficient Form or Content of Cancellation Notice.

11 Am. Jur. Proof of Facts 3d 227, Ineffective Cancellation of Automobile Insurance Policy-Deficient Repayment or Tender of Unearned Premium.

CJS. 45 C.J.S., Insurance §§ 674-696.

§ 83-11-5. Notice of cancellation.

No notice of cancellation of a policy to which Section 83-11-3 applies shall be effective unless mailed or delivered by the insurer to the named insured and to any named creditor loss payee at least thirty (30) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium at least ten (10) days' notice of cancellation accompanied by the reason therefor shall be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than fifteen (15) days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

This section shall not apply to nonrenewal unless there is a named creditor loss payee.

SOURCES: Codes, 1942, § 5670.8-103; Laws, 1970, ch. 450, § 3; Laws, 1989, ch. 410, § 2; Laws, 2006, ch. 480, § 2, eff from and after July 1, 2006.

Cross References — Requirement of conformity with this section for cancellation of legal expense insurance, see § 83-49-13.

JUDICIAL DECISIONS

1. In general.
2. Negotiation of premium check.

1. In general.

Production of a certificate of mailing raised a rebuttable presumption that the notice of cancellation was mailed, and a mere denial by the insured that he did not receive the notice of cancellation was not sufficient to rebut the presumption. Branch v. State Farm Fire & Cas. Co., 759 So. 2d 430 (Miss. Ct. App. 2000).

If insurance company, by its habit of business, creates in mind of policy holder belief that payment may be delayed until demanded, or otherwise waives right to demand forfeiture, this is binding on company notwithstanding there may not have been compliance with express letter of policy, but that principle has no application unless custom or usage was one of which insured had knowledge and upon which he relied, and this must apply equally to all types of insurance relationships. Stephen R. Ward, Inc. v. United States Fid. & Guar. Co., 681 F. Supp. 389 (S.D. Miss. 1988).

Proof of mailing satisfies the notice requirement of § 83-11-5 for cancellation of an insurance policy. Thus, a certificate of mailing of a notice of cancellation to an insured at the address shown on an automobile insurance policy was sufficient proof of notice, and cancellation of the policy was effective, even though the insured denied that he ever received notice. State Farm Ins. Co. v. Gay, 526 So. 2d 534 (Miss. 1988).

Argument that automobile liability policy was ineffective because premium was not paid failed, when the jury could have found that the insured had a billing and credit arrangement with his agent which made the nonpayment irrelevant and no notice of cancellation of the policy had been given as required by this section. Henderson v. United States Fid. & Guar. Co., 620 F.2d 530 (5th Cir. Miss. 1980), cert. denied, 449 U.S. 1034, 101 S. Ct. 608, 66 L. Ed. 2d 495 (1980).

Under this section, notice of cancellation for nonpayment of a premium must be given at least ten days before the effective date of the cancellation and the timeliness of such notice must be determined by the date of its receipt rather than by the date of its mailing; if cancellation is for a reason other than nonpayment, the notice may be mailed or delivered at least 20 days before the cancellation date. Black v. Fidelity & Guar. Ins. Underwriters, Inc., 582 F.2d 984 (5th Cir. 1978).

2. Negotiation of premium check.

An insurance company was not equitably estopped from denying coverage due to the fact that it negotiated a premium check that the insureds had belatedly sent after receiving a proper notice of cancellation, prior to sending them a refund; the insureds' failure to mail a check in a timely manner was their responsibility alone and the mere negotiation of the refund check could not have given rise to a reasonable belief on the part of the insureds that their policy was still in effect, even assuming, purely arguendo, that they were aware of such negotiation at the time of their accident. Brown v. Progressive Gulf Ins. Co., 761 So. 2d 134 (Miss. 2000).

RESEARCH REFERENCES

ALR. Actual receipt of cancellation notice mailed by insurer as prerequisite to cancellation of insurance. 40 A.L.R.4th 867.

Am Jur. 7 Am. Jur. 2d, Automobile Insurance § 10.

3 Am. Jur. Legal Forms 2d, Automobile Insurance §§ 32:11 et seq. (cancellation and nonrenewal).

10 Am. Jur. Proof of Facts 3d 483, Ineffective Cancellation of Automobile Insurance Policy-Deficient Communication of Cancellation Notice.

11 Am. Jur. Proof of Facts 3d 131, Ineffective Cancellation of Automobile Insurance Policy-Deficient Form or Content of Cancellation Notice.

11 Am. Jur. Proof of Facts 3d 227, Ineffective Cancellation of Automobile Insurance Policy-Deficient Repayment or Tender of Unearned Premium.

CJS. 45 C.J.S., Insurance § 653, 687-690.

§ 83-11-7. Non-renewal.

No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy and to the named creditor loss payee, at least thirty (30) days' advance notice of its intention not to renew. This section shall not apply if there is no named creditor loss payee and:

(a) If the insurer has manifested its willingness to renew, subject to certain specified conditions which are not met by the insured; nor

(b) If the insured has manifested its unwillingness to renew; nor

(c) In case of nonpayment of premium; nor

(d) In case of failure to make timely payment of dues to, or to maintain membership in good standing with, a designated association, corporation or other organization where the original issue of such policy or renewal was dependent upon such membership; provided that, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal, and if a policy shall be cancelled as authorized by this article prior to such policy's renewal, such cancellation shall terminate any right of renewal conferred by this article.

SOURCES: Codes, 1942, § 5670.8-104; Laws, 1970, ch. 450, § 4; Laws, 2006, ch. 480, § 3, eff from and after July 1, 2006.

JUDICIAL DECISIONS

1. In general.

Where insurance company manifests willingness to renew insurance policy by language in policy indicating that nonpayment of premiums or loss of driver's license would be only grounds for cancellation, but policy also provides for insurer's right to choose not to renew policy for nonpayment of premiums, insurer does not have to send insured cancellation notice upon failure to receive premium payment within specified time, such nonpayment may be treated as nonrenewal. Estate of Beinhauer v. Aetna Cas. & Sur. Co., 893 F.2d 782 (5th Cir. 1990).

If insurance company, by its habit of business, creates in mind of policy holder belief that payment may be delayed until demanded, or otherwise waives right to demand forfeiture, this is binding on company notwithstanding there may not have been compliance with express letter of policy, but that principle has no application unless custom or usage was one of which insured had knowledge and upon which he relied, and this must apply equally to all types of insurance relationships. Stephen R. Ward, Inc. v. United States Fid. & Guar. Co., 681 F. Supp. 389 (S.D. Miss. 1988).

Section 83-11-7 is directed to situation where insurer has made conscious decision not to renew policy at expiration date, and does not address issue whether notice is required before existing policy expires when insurer is willing to renew policy but has not been contacted by insured regarding any renewal; good faith reliance by insurer on advice of counsel prevents imposition of punitive damages. Gorman v. Southeastern Fid. Ins. Co., 775 F.2d 655 (5th Cir. 1985).

Insurer is not liable for punitive damages as result of its refusal to pay claim where it had arguable reason for denial, since, as of time of dispute, issue of whether notice of its intention not to renew policy was required as matter of law under facts of case had never been determined, and where defendant's denial of payment was based upon advice of counsel. Gorman v. Southeastern Fid. Ins. Co., 621 F. Supp. 33 (S.D. Miss. 1985), aff'd, 775 F.2d 655 (5th Cir. 1985).

Automobile insurance coverage lapses, in accordance with provisions of insurance policy and renewal and premium due notices sent insured, where insured fails to make timely payment of renewal premium, notwithstanding insured's tender of renewal premium following automobile accident occurring three weeks after expiration of policy. Willis v. Mississippi Farm Bureau Mut. Ins. Co., 481 So. 2d 256 (Miss. 1985).

RESEARCH REFERENCES

ALR. Insured's right of action for arbitrary nonrenewal of policy, where insurer has option not to renew. 37 A.L.R.4th 862.

Am Jur. 3 Am. Jur. Legal Forms 2d, Automobile Insurance §§ 32:11 et seq. (cancellation and nonrenewal).

CJS. 44 C.J.S., Insurance §§ 457-459 et seq.

§ 83-11-9. Proof of notice.

Proof of mailing of notice of cancellation, or of intention not to renew, or of reasons for cancellation to the named insured by a certificate of mailing, at the address shown in the policy, shall be sufficient proof of notice.

SOURCES: Codes, 1942, § 5670.8-105; Laws, 1970, ch. 450, § 5, eff 90 days after passage (approved April 2, 1970).

Cross References — Requirement of conformity with this section for cancellation of legal expense insurance, see § 83-49-13.

JUDICIAL DECISIONS

1. In general.

Production of a certificate of mailing raised a rebuttable presumption that the notice of cancellation was mailed, and a mere denial by the insured that he did not receive the notice of cancellation was not sufficient to rebut the presumption. Branch v. State Farm Fire & Cas. Co., 759 So. 2d 430 (Miss. Ct. App. 2000).

Production of a "certificate of mailing" does not constitute conclusive proof of an insured's actual receipt of a cancellation notice. A certificate of mailing establishes a presumption that the notice reached its destination. However, this presumption may be rebutted by the insured who contends that he or she did not actually receive the notice, though mere denial of receipt is insufficient to create a triable issue of fact. In other words, proof of mailing of a notice of cancellation is sufficient proof of notice absent countervailing evidence of sufficient weight to rebut the presumption that it was received. Carter v. Allstate Indem. Co., 592 So. 2d 66 (Miss. 1991).

Premium notice carrying statement at top of page that for continuous protection, payment must be mailed prior to date due, is sufficient to meet requirements of § 83-11-9. Willis v. Mississippi Farm Bureau Mut. Ins. Co., 481 So. 2d 256 (Miss. 1985).

In a second trial on a punitive damages claim against an insurer, the trial court's remark that the insurer's testimony regarding whether a cancellation notice was mailed was irrelevant because the insured never received it was not prejudicial to defendant and was clearly accurate, since the issue of whether a cancellation notice was given had already been conclusively determined in the first trial between the same parties. Henderson v. United States Fid. & Guar. Co., 695 F.2d 109 (5th Cir. 1983).

RESEARCH REFERENCES

ALR. Actual receipt of cancellation notice mailed by insurer as prerequisite to cancellation of insurance. 40 A.L.R.4th 867.

Am Jur. 43 Am. Jur. 2d, Insurance § 434.

10 Am. Jur. Proof of Facts 3d 483, Ineffective Cancellation of Automobile Insurance Policy-Deficient Communication of Cancellation Notice.

11 Am. Jur. Proof of Facts 3d 131, Ineffective Cancellation of Automobile Insurance Policy-Deficient Form or Content of Cancellation Notice.

11 Am. Jur. Proof of Facts 3d 227, Ineffective Cancellation of Automobile Insurance Policy-Deficient Repayment or Tender of Unearned Premium.

CJS. 45 C.J.S., Insurance § 653, 687-690.

§ 83-11-11. Notice of insured's eligibility for assigned risk plan.

When a policy of automobile liability insurance is cancelled other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance to which Section 83-11-7 applies, the insurer shall notify the named insured of his possible eligibility for automobile liability insurance through the automobile liability assigned risk plan. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew.

SOURCES: Codes, 1942, § 5670.8-106; Laws, 1970, ch. 450, § 6, eff 90 days after passage (approved April 2, 1970).

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. 2d, Automobile Insurance §§ 9, 10, 36.

§ 83-11-13. Written statement of reasons for cancellation.

Where the reason for cancellation does not accompany or is not included in the notice of cancellation, the insurer shall, upon written request of the named insured mailed or delivered to the insurer not less than fifteen (15) days prior to the effective date of cancellation, specify in writing the reason for such cancellation. Such reason shall be mailed or delivered to the named insured within five (5) days after receipt of such request.

SOURCES: Codes, 1942, § 5670.8-107; Laws, 1970, ch. 450, § 7, eff 90 days after passage (approved April 2, 1970).

Cross References — Requirement of conformity with this section for cancellation of legal expense insurance, see § 83-49-13.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. 2d, Automobile Insurance §§ 8-10.

CJS. 45 C.J.S., Insurance §§ 674-696.

§ 83-11-15. Liability for statement of reasons for cancellation.

There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner of insurance or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer or its agents information as to reasons for cancellation, for any statement made by any of them in any written notice of cancellation or in any other communication, oral or written, specifying the reasons for cancellation or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

SOURCES: Codes, 1942, § 5670.8-108; Laws, 1970, ch. 450, § 8, eff 90 days after passage (approved April 2, 1970).

Cross References — Requirement of conformity with this section for cancellation of legal expense insurance, see § 83-49-13.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. 2d, Automobile Insurance §§ 8-10.

CJS. 45 C.J.S., Insurance §§ 674-696.

§ 83-11-17. Appeal from cancellation or nonrenewal.

A named insured who wishes to contest the reason or reasons for a cancellation of a policy which has been in effect for sixty (60) days or more or failure by insurer to give proper notice of nonrenewal as provided hereunder shall, not less than seven (7) working days from the date of receipt of notice of cancellation or receipt of notice of nonrenewal, mail or deliver to the Commissioner of Insurance a written request for a hearing, which request shall state clearly the basis for the appeal and shall be accompanied by a filing fee of Fifteen Dollars ($15.00).

A cancellation or nonrenewal which is subject to the provisions of this article shall be deemed effective unless the Commissioner of Insurance determines otherwise in accordance with the provisions of this article.

SOURCES: Codes, 1942, § 5670.8-109; Laws, 1970, ch. 450, § 9; Laws, 1998, ch. 416, § 1, eff from and after July 1, 1998.

Cross References — Requirement of conformity with this section for cancellation of legal expense insurance, see § 83-49-13.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 472-476.

10 Am. Jur. Proof of Facts 3d 483, Ineffective Cancellation of Automobile Insurance Policy-Deficient Communication of Cancellation Notice.

11 Am. Jur. Proof of Facts 3d 131, Ineffective Cancellation of Automobile Insurance Policy-Deficient Form or Content of Cancellation Notice.

11 Am. Jur. Proof of Facts 3d 227, Ineffective Cancellation of Automobile Insurance Policy-Deficient Repayment or Tender of Unearned Premium.

CJS. 45 C.J.S., Insurance §§ 721-738.

§ 83-11-19. Hearing and order of commissioner.

Within two (2) working days after receipt of a timely request for a hearing, the commissioner or his officially appointed designee shall call a hearing upon at least seven (7) days' notice to the parties. Each insurer licensed to do in this state the kind of business which is subject to this article shall maintain on file with the commissioner the name and address of the person authorized to receive notices pursuant to this article on behalf of the insurer.

The commissioner or his designated representative who conducted the hearing shall, at the conclusion thereof or not later than two (2) days thereafter, issue his written findings to the parties. If he finds for the named insured, he shall assess the insurer Fifteen Dollars ($15.00) to defray the cost of the hearing and shall refund the Fifteen Dollars ($15.00) filing fee to the named insured; and he shall either order the insurer to rescind its notice of cancellation or, if the date cancellation is to be effective has elapsed, order the policy reinstated or renewed. Such order shall operate retroactively only to cover a period not to exceed twenty (20) days from the date cancellation otherwise would have been effective, and prospectively from the date on which the order was issued; provided, however, that no policy shall be reinstated or renewed while the named insured is in arrears in payment of premiums on such policy. If the commissioner or his representative finds for the insurer, his written order shall so state and he shall assess the named insured Fifteen Dollars ($15.00) and apply the named insured's Fifteen Dollar ($15.00) filing fee against the assessment to defray the cost of the hearing. Reinstatement of a policy under this section shall not operate in any way to extend the expiration, termination, or anniversary date provided in the policy. Renewal of a policy shall be for a term of one (1) year from the expiration date of the prior policy, and otherwise shall contain the same coverage, terms, and contractual provisions contained in said prior policy.

SOURCES: Codes, 1942, § 5670.8-110; Laws, 1970, ch. 450, § 10, eff 90 days after passage (approved April 2, 1970).

Cross References — Requirement of conformity with this section for cancellation of legal expense insurance, see § 83-49-13.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 472 et seq.

CJS. 45 C.J.S., Insurance §§ 721-729 et seq.

§ 83-11-21. Judicial appeals from commissioner's decisions.

The following procedure shall govern in taking and perfecting appeals from the decision of the commissioner:

(a) Any person who is a party to any hearing before the commissioner, and who is aggrieved by any decision of the commissioner with respect to any hearing before him, shall have the right of appeal to the chancery court of the county of the insured's residence. All such appeals shall be taken and perfected within sixty (60) days from the date of the decision of the commissioner which is the subject of the appeal, and the chancery court to which such appeal is taken may affirm such decision, or reverse and remand the same to the commissioner for further proceedings as justice may require, or dismiss such appeal. All such appeals shall be tried de novo.

(b) Upon the filing with the commissioner of a petition of appeal to the proper chancery court, it shall be the duty of the commissioner, as promptly as possible and in any event within sixty (60) days after approval of the appeal bond, to file with the clerk of said chancery court to which the appeal is taken a copy of the petition for appeal and of the decision appealed from, and the original and one (1) copy of the transcript of the record of the proceedings and evidence before the commission. After the filing of said petition, the appeal shall be perfected by the filing of a bond in the penal sum of One Hundred Dollars ($100.00) with two (2) sureties, or with a surety company qualified to do business in Mississippi as surety, conditioned to pay the costs of such appeal, said bond to be approved by the commissioner or by the clerk of the chancery court to which such appeal is taken.

(c) No decision of the commissioner made as a result of a hearing under the provisions of this section shall become final with respect to any party affected and aggrieved by such decision until such party shall have exhausted or shall have had an opportunity to exhaust all of his remedies provided by this section.

SOURCES: Codes, 1942, § 5670.8-111; Laws, 1970, ch. 450, § 11, eff 90 days after passage (approved April 2, 1970).

Cross References — Requirement of conformity with this section for cancellation of legal expense insurance, see § 83-49-13.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

ARTICLE 3.

UNINSURED MOTORIST COVERAGE.

SEC.	
83-11-101.	Automobile liability policies to contain "uninsured motorist" and property damage provisions.
83-11-102.	Purchase of single-limit, nonstacking uninsured motorist insurance coverage for 10 or more vehicles in lieu of uninsured motorists coverage for each vehicle.
83-11-103.	Definitions.
83-11-105.	Action against owner or operator of uninsured vehicle.
83-11-107.	Subrogation.
83-11-109.	Arbitration provisions prohibited.
83-11-111.	Excess insurance coverage.

§ 83-11-101. Automobile liability policies to contain "uninsured motorist" and property damage provisions.

(1) No automobile liability insurance policy or contract shall be issued or delivered after January 1, 1967, unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages for bodily injury or death from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than those set forth in the Mississippi Motor Vehicle Safety Responsibility Law, as amended, under provisions approved by the commissioner of insurance; however, at the option of the insured, the uninsured motorist limits may be increased to limits not to exceed those provided in the policy of bodily injury liability insurance of the insured or such lesser limits as the insured elects to carry over the minimum requirement set forth by this section. The coverage herein required shall not be applicable where any insured named in the policy shall reject the coverage in writing and provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in any renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer.

(2) No automobile liability insurance policy or contract shall be issued or delivered after January 1, 1980, unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages for property damage from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than those set forth in the Mississippi Motor Vehicle Safety Responsibility Law, as amended, under provisions approved by the commissioner of insurance; however, at the

option of the insured, the uninsured motorist limits may be increased to limits not to exceed those provided in the policy of property damage liability insurance of the insured or such lesser limits as the insured elects to carry over the minimum requirement set forth by this section. The coverage herein required shall not be applicable where any insured named in the policy shall reject the coverage in writing and provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in any renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer.

The property damage provision may provide an exclusion for the first Two Hundred Dollars ($200.00) of such property damage; however, the uninsured motorist provision need not insure any liability for property damage, for which loss the policyholder has been compensated by insurance or otherwise.

(3) The insured may reject the property damage liability insurance coverage required by subsection (2) and retain the bodily injury liability insurance coverage required by subsection (1), but if the insured rejects the bodily injury liability coverage he may not retain the property damage liability coverage. No insured may have property damage liability insurance coverage under this section unless he also has bodily injury liability insurance coverage under this section.

SOURCES: Codes, 1942, § 8285-51; Laws, 1966, ch. 524, § 1; Laws, 1974, ch. 393; Laws, 1979, chs. 429 § 2, 432, eff from and after January 1, 1980.

Cross References — Motor Vehicle Safety Responsibility Law, see §§ 63-15-1 et seq.

Application of this section to the exemption from liability of volunteers and sports officials, see § 95-9-5.

JUDICIAL DECISIONS

1. In general.
2. Construction.
3. Provisions included by law in insurance policies.
4. Oral promise to bind uninsured motorist policy.
5. Who is "uninsured" or "underinsured."
6. Beneficiaries; assignment of benefits.
7. Recovery and elements of damages.
8. —Aggregating or "stacking" of claims.
9. —Exclusion of or offset against benefits payable under other provisions or policies.
10. —Punitive damages.
11. Applicability to particular vehicles.
12. When cause of action accrues.
13. Which state's law applies.
14. Prerequisites to bringing suit against insurer.

1. In general.

Purpose of Miss. Code Ann. § 83-11-101(2) is to provide protection to innocent insured motorists and passengers injured as a result of the negligence of financially irresponsible drivers; the intent is to provide the same protection to one injured by an uninsured motorist as that individual would have if injured by a financially responsible driver. Jones v. Southern United Fire Ins., 935 So. 2d 1127 (Miss. Ct. App. 2006).

In a family's wrongful death suit against the department of motor vehicles and the decedents' insurer, based upon the remedial purposes of Mississippi's Uninsured Motorist Act, Miss. Code Ann. § 83-11-101 et seq., and the stipulated damages which well exceeded the parties' settlement, the family was entitled to receive uninsured motorist benefits from the insurer. Alfa Ins. Corp. v. Ryals, 918 So. 2d 676 (Miss. Ct. App. 2004).

Employer's (insured's) policy never rejected uninsured motorists coverage, but it limited the protection to those vehicles the employer owned, and there was a written application for limited coverage made by the insured through its agent; the appellate court interpreted the statutory right to reject coverage in writing to encompass the lesser act of limiting that coverage, and that was sufficient insofar as the employer was concerned. Trotter v. Fed. Ins. Co., 865 So. 2d 411 (Miss. Ct. App. 2004).

Trial court erred by denying the insurer summary judgment in the employee's suit to enforce uninsured motorist coverage because a written rejection of coverage by the employer was not required to be maintained where the evidence indicated that the coverage had voluntarily been dropped prior to the accident. Travelers Prop. Cas. Corp. v. Stokes, 838 So. 2d 270 (Miss. 2003).

Mississippi's Uninsured Motorist Act (UM Act) was designed to fill three gaps in coverage that were left after enactment of Mississippi's Safety Responsibility Act: negligent drivers would often fail to purchase liability insurance mandated by law; denial of coverage on basis of uninsured motorist exclusions or policy breaches; and tortfeasor sometimes happened to be hit-and-run driver. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248 (5th Cir. 1997).

Uninsured motorist (UM) policy terms that meet minimum requirements under Mississippi's Uninsured Motorist Act (UM Act), by definition, cannot run counter to Mississippi public policy. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248 (5th Cir. 1997).

In enacting Mississippi's Uninsured Motorist Act (UM Act), Mississippi legislature intended to put "first accident" insureds in as good a position as they would have been in had uninsured motorist purchased automobile liability insurance pursuant to terms of Mississippi's Safety Responsibility Act. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248 (5th Cir. 1997).

Hitchhiker was not "operator" of uninsured motor vehicle, so as to entitle estate of insured driver to uninsured motorist (UM) benefits when hitchhiker murdered driver; although hitchhiker told insured where to drive after pulling gun on insured, hitchhiker did not operate truck prior to murder and did not murder insured driver to gain use of vehicle. United Servs. Auto. Ass'n v. Shell, 698 So. 2d 96 (Miss. 1997).

Under § 83-11-101(1), uninsured motorist (UM) carrier was entitled to assert city's defense of sovereign immunity (§ 11-46-9) in connection with collision between fire truck and insured; insured's statutory right to UM benefits is limited to instances in which insured would be entitled, at time of injury, to recover through legal action. Coleman v. American Mfrs. Mut. Ins. Co., 930 F. Supp. 255 (N.D. Miss. 1996).

Decision of federal district court sitting in Mississippi as to whether Mississippi insurance agents had duty to recommend uninsured motorist limits to insureds was not binding upon state Supreme Court. Aetna Cas. & Sur. Co. v. Berry, 669 So. 2d 56 (Miss. 1996).

In order for insured to have option to increase uninsured motorist (UM) limits or for insured to completely reject UM coverage in writing, insurance agent has duty to explain UM coverage; agent is not under duty to recommend that insured exercise option to obtain UM coverage up to limits of policy, but before insured may make intelligent decision about how much UM coverage he or she wants, or make knowing waiver of coverage in writing, insured must understand what he or she is entitled to. Aetna Cas. & Sur. Co. v. Berry, 669 So. 2d 56 (Miss. 1996).

Language in an insurance policy limiting uninsured motorist (UM) coverage to damages arising "out of the ownership, maintenance or use of an uninsured motor vehicle" did not impermissibly narrow the limits of UM coverage intended under Mississippi's UM statute (§ 83-11-101 et seq.), since the policy language satisfied the intent of the UM statute by affording a person injured by an uninsured motorist the same protection he or she would have if injured by a financially responsible driver. Spradlin v. Atlanta Cas. Co., 650 So. 2d 1389 (Miss. 1995).

Language in an insurance policy limiting uninsured motorist (UM) coverage to injury or damage caused by an accident "arising out of the operation, maintenance or use of an uninsured motor vehicle" did not impermissibly narrow the limits of UM coverage intended under Mississippi's UM statute (§ 83-11-101 et seq.); although the UM statute does not specifically set out the connection that must exist between the injury and the uninsured vehicle, § 83-11-101 states that the limits of UM coverage shall be no less than those set forth in the Motor Vehicle Safety Responsibility Law (§ 63-15-1 et seq.), which provides in part that an owner's liability insurance policy which has been certified as proof of financial responsibility shall pay damages "arising out of the ownership, maintenance or use of such motor vehicle" (§ 63-15-43(2)(b)), and therefore the UM policy language satisfied the intent and purpose of the UM statute by affording a person injured by an uninsured motorist the same protection he or she would have if injured by a financially responsible driver. Spradlin v. State Farm Mut. Auto. Ins. Co., 650 So. 2d 1383 (Miss. 1995).

The meaning of the phrase "legally entitled to recover" found in the Mississippi Uninsured Motorist Act (§§ 83-11-101 et seq) limits the scope of the coverage mandated by the statute to those instances in which the insured would be entitled at the time of injury to recover through legal action; there is no statutory mandate to provide coverage in instances where the alleged tortfeasor is immune from liability. Medders v. United States Fid. & Guar. Co., 623 So. 2d 979 (Miss. 1993).

Under §§ 83-11-101 and 83-11-103, when an automobile owner accepts an insurer's offer of uninsured motorist coverage, both the owner and his or her guests are insured for bodily and property damage arising from the negligent operation of an uninsured vehicle. Brown v. Hartford Ins. Co., 606 So. 2d 122 (Miss. 1992).

A "named driver exclusion" endorsement in an automobile insurance policy, which specifically provides for the written rejection of uninsured motorist benefits, violates the Mississippi Uninsured Motorist Act (§§ 83-11-101 et seq.) so as to render the exclusion invalid. Atlanta Cas. Co. v. Payne, 603 So. 2d 343 (Miss. 1992).

The burden of proof is on the insurer to show that an exclusion limiting uninsured motorist coverage, or any other quasi-rejection of uninsured motorist insurance, was a knowing and informed decision. Atlanta Cas. Co. v. Payne, 603 So. 2d 343 (Miss. 1992).

There is no cause of action in Mississippi predicated on duty of insurance company or its agents to recommend uninsured motorist policy limits to applicants. Thomas v. State Farm Mut. Auto. Ins. Co., 796 F. Supp. 231 (S.D. Miss. 1992).

Where uninsured motorist benefits were written into an assigned risk policy through operation of law, the imposed coverage would be the statutory minimum of $10,000 per vehicle, rather than the amount contracted in a previously canceled policy, where there was no evidence that either party intended to reinstate the policy limits contained in the former policy; since coverage was written into the contract by operation of law, so was the amount of coverage. Harris v. Magee, 573 So. 2d 646 (Miss. 1990).

An insurer was notified of a claim, which arose from an automobile accident between an insured and an uninsured motorist, well within the applicable 6-year statute of limitations set forth in § 15-1-49, even though the insurer was first notified of the accident approximately 6½ years after the date of the accident, where the insured was 17 years old when she was injured in the accident, and therefore, pursuant to § 15-1-59, the statute of limitations did not begin to run against her until she reached her 21st birthday. The policy and purpose behind the Uninsured Motorist Act is to provide the same protection to one injured by an uninsured motorist as that individual would have if injured by a financially responsible driver. Thus, since the insured's cause of action against the uninsured motorist was not barred, her claim against the insurer was viable; since uninsured motorist coverage was purchased, the insurer had an obligation to protect the insured as long as the claim against the uninsured motorist was permitted. Lawler v. GEICO, 569 So. 2d 1151 (Miss. 1990).

Section 83-11-101(1) requires only that each liability policy provides some uninsured motorist coverage to the insured, but does not require that uninsured motorist coverage be provided on each of several vehicles for which liability coverage is provided under single policy. Pride v. General Agents Ins. Co. of Am., 697 F. Supp. 1417 (N.D. Miss. 1988).

Insurer's contesting coverage for noncompliance with written proof of loss provision does not constitute bad faith; mere inquiry or request for information from insurance agent is not equivalent of filing claim; telephone call by relative of insured to insurance agent concerning motorcycle accident of insured with uninsured motorist does not constitute properly filed claim under insured's separate automobile policies, where discussion was limited to insured's motorcycle policy, which had lapsed, and no discussion of separate auto policies and uninsured motorist provisions of those policies were discussed; availability of attorney's fees in insurance claims litigation which do not involve bad faith actions but in which claims were denied through simple negligence or misjudgment of insurer are desirable and would wholly compensate insured who is entitled to proceeds when they become due and payable under policy. Donahoo v. State Farm Mut. Auto. Ins. Co., 684 F. Supp. 911 (N.D. Miss. 1987).

Plaintiff, who was passenger in his employer's truck and who was injured in accident while both he and co-employee uninsured driver were acting within course of their employment, was not entitled to uninsured motorist benefits, despite provision in insurance policy on truck issued to plaintiff's employer that excluded from liability coverage all worker's compensation-covered injuries to employer's employees. Perkins v. Insurance Co. of N. Am., 799 F.2d 955 (5th Cir. 1986).

Automobile insurance policy provision, which excluded from uninsured motorist coverage any vehicle not insured for such coverage under the policy, excluded all uninsured motorist coverage for any vehicle not listed in the policy and not just that uninsured coverage in excess of that required by statute, and the provision was invalid. Employers Mut. Cas. Co. v. Tompkins, 490 So. 2d 897 (Miss. 1986).

Under § 83-11-101, uninsured motorist coverage is required to be offered with all bodily injury liability policies and any attempt to contractually limit an insurer's duty of coverage is necessarily confined to the boundaries of the statute and may not be effective to narrow the requirements of that statute; thus where the insured, who was injured while riding as a passenger in her own car, brought suit against her insurance company to recover under her uninsured motorist coverage, and where her policy expressly forbade her to make a claim based on liability of an uninsured operator of her own vehicle, the Supreme Court held would find that, in light of the fact that the driver was an uninsured motorist, it was against public policy of the state to allow the insurance company to exclude the insured from coverage. State Farm Mut. Auto. Ins. Co. v. Nester, 459 So. 2d 787 (Miss. 1984).

Recovery under uninsured or underinsured motorist liability insurance cannot be limited by an insurer for benefits for which a premium is paid by an insured, notwithstanding clear and unambiguous language of attempted limitation by the insurer. Thus, on a claim involving one of three insured vehicles, aggregation of coverages is permitted on two distinct theories: (1) uninsured motorist coverage contained in one policy of insurance insuring the three vehicles, and for which a separate premium was paid, can be aggregated; (2) while the language of the "limits of liability" clause of the insurance policy is clear and unambiguous as to what is intended, when read together with the declaration sheet it becomes unclear and ambiguous, inasmuch as the declaration sheet seeks to provide separate coverages for uninsured motorists on three vehicular units and charges separate premiums therefor while the "limits of liability" clause seeks to repudiate such coverage; on either theory the limitation fails and is void. Government Employees Ins. Co. v. Brown, 446 So. 2d 1002 (Miss. 1984).

Section 83-11-101 does not mandate limits of uninsured motorist coverage equivalent to limits of liability coverage. Johnston v. Safeco Ins. Co. of Am., 727 F.2d 548 (5th Cir. 1984).

The fact that the advertisement by the State Highway Commission for bids on liability insurance for its motor vehicles and equipment did not mention uninsured motorist coverage did not constitute an implied rejection on such coverage by the Commission. Parker v. Cotton Belt Ins. Co., 314 So. 2d 342 (Miss. 1975).

Where an automobile liability insurance policy contained a clause excluding bodily injuries to an insured while occupying or through being struck by a land motor vehicle owned by a named insured or any resident of the same household, if such vehicle was not an owned motor vehicle, and insured's son was clearly within the terms of the exclusionary provision of the policy since he was riding a motorcycle which he owned when he was struck by an uninsured motorist, and his motorcycle was not an "owned motor vehicle" as set out in the declaration of the motor vehicle insured, nevertheless the exclusionary clause of the policy violated the public policy of Mississippi by conflicting with the Mississippi statute requiring all automobile liability insurance policies to contain an uninsured motorist provision. Lowery v. State Farm Mut. Auto. Ins. Co., 285 So. 2d 767 (Miss. 1973).

Upon an insured establishing the legal liability of the uninsured motorist, an insurance company would be required to pay such judgment within the applicable limits of the policy. Logan v. Aetna Cas. & Sur. Co., 309 F. Supp. 402 (S.D. Miss. 1970).

The omnibus clause in an automobile liability insurance policy which allows the insured to include others as insureds under the policy merely by granting permission to use the vehicle should be construed in the light of the manifest public policy of this state as indicated by the Motor Vehicle Safety Responsibility Law and the Uninsured Motor Vehicle Law, both of which clearly indicate the legislative policy of protecting the public and providing insurance coverage where persons are injured on the highways of the state. Travelers Indem. Co. v. Watkins, 209 So. 2d 630 (Miss. 1968).

2. Construction.

Provisions of Miss. Code Ann. § 83-11-101(2) are to be liberally construed to achieve its purpose. Jones v. Southern United Fire Ins., 935 So. 2d 1127 (Miss. Ct. App. 2006).

In the context of the application of Miss. Code Ann. § 83-11-101(2), no employee needs to waive or limit uninsured motorist coverage if the company itself does so in writing, either through a document that it signs or one signed by a properly authorized agent. Trotter v. Fed. Ins. Co., 865 So. 2d 411 (Miss. Ct. App. 2004).

When an insured named in the policy puts in writing the limits on uninsured motorist coverage that it wants, this satisfies Miss. Code Ann. § 83-11-101(2) (Rev. 1999). In such case, limits on uninsured motorist coverage solely to vehicles that the employer owns is properly requested in writing, and is therefore effective. Trotter v. Fed. Ins. Co., 865 So. 2d 411 (Miss. Ct. App. 2004).

As under Miss. Code Ann. § 71-3-9, the insured was not "legally entitled to recover" any damages from his employer or the co-employee who injured him in an auto accident, he was not entitled under Miss. Code Ann. § 83-11-101(1) to recover uninsured motorist benefits from his private insurer for this accident. Wachtler v. State Farm Mut. Auto. Ins. Co., 835 So. 2d 23 (Miss. 2003).

Purpose of the Uninsured Motorist Act and Uninsured Motorist coverage was to insure that injured parties could receive all sums they are legally entitled to recover as damages for bodily injury. McDaniel v. Shaklee U.S., Inc., 807 So. 2d 393 (Miss. 2001).

Courts should liberally construe provisions of Mississippi's Uninsured Motorist Act (UM Act) to effectuate its remedial and humanitarian purposes. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248 (5th Cir. 1997).

Under Mississippi's Uninsured Motorist Act (UM Act), uninsured motorist provisions within automobile insurance policies must be interpreted from standpoint of injured insured. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248 (5th Cir. 1997).

Although Mississippi Supreme Court has not always closed its judicial eye to insurance law of other jurisdictions, court has more recently suggested that courts interpreting Mississippi uninsured motorist law should be guided by terms of Mississippi's Uninsured Motorist Act (UM Act), not jurisprudence of foreign jurisdictions. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248 (5th Cir. 1997).

Although court should avoid exceptions or exemptions from coverage under Mississippi's Uninsured Motorist Act (UM Act), court cannot rewrite Act to include situations not expressly provided for or contemplated under guise of liberally construing Act in order to accomplish its designed purpose. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248 (5th Cir. 1997).

Certificate of self-insurance is not commercial insurance policy subject to provisions of Uninsured Motorist Act. McCoy v. South Cent. Bell Tel. Co., 688 So. 2d 214 (Miss. 1996), reh'g denied, 691 So. 2d 1026 (Miss. 1997).

Where uninsured motorist benefits were written into an assigned risk policy through operation of law, the amount of coverage was the statutory minimum, rather than the amount contracted in a previously cancelled policy, where there was no evidence that the parties intended to impute the uninsured motorist limits from the cancelled policy into the assigned risk policy. Harris v. Magee, 573 So. 2d 646 (Miss. 1990).

Statutory definition of underinsured vehicle should be construed literally with respect to limits of coverage. Herrod v. National Indem. Co., 643 F. Supp. 956 (N.D. Miss. 1986).

3. Provisions included by law in insurance policies.

If provisions of Mississippi's Uninsured Motorist Act (UM Act) provide broader protection than uninsured motorist policy, then terms of Act become part of policy, providing insured statutory level of monetary protection. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248 (5th Cir. 1997).

All automobile policies are required to include uninsured motorist coverage unless specifically waived; this includes coverage for corporations, as distinct from coverage from individuals, which have paid premiums to provide employees of such corporations with uninsured motorist coverage. Pemberton v. State Farm Mut. Auto. Ins. Co., 803 F. Supp. 1187 (S.D. Miss. 1992).

The uninsured motorist provision was included by law in a policy of insurance which became effective after the effective date of this chapter. United States Fid. & Guar. Co. v. Gough, 289 So. 2d 925 (Miss. 1974).

4. Oral promise to bind uninsured motorist policy.

In an action by an insured against his insurer alleging that the insurer had negligently failed to provide the insured with uninsured motorist coverage prior to his automobile accident with an uninsured motorist, the insurer's oral promise to provide uninsured motorist coverage was binding, even in the absence of a written request for that coverage by the insured, and even though the insured had previously rejected such coverage; summary judgment for the insurer was improper where there existed a genuine issue of material fact as to whether the insurer orally promised to bind the uninsured motorist policy; the doctrine of res ipsa loquitur could be used to infer of that the uninsured motorist was negligent. Stringer v. Bufkin, 465 So. 2d 331 (Miss. 1985).

Oral promise by insurance agent to provide uninsured motorist coverage is binding upon insurance company represented by agent even in absence of written request for coverage by insured who has previously rejected it. Stringer v. Bufkin, 465 So. 2d 331 (Miss. 1985).

5. Who is "uninsured" or "underinsured."

Where a passenger was injured, the passenger did not demonstrate that the insured driver was an underinsured motorist under the standard set forth by the Mississippi Supreme Court, which required a comparison of the tortfeasor's liability coverage and the personal coverage carried by, or available to the injured party, nor did the passenger demonstrated good reason to abandon that standard; thus, summary judgment for the insurer on the passenger's claim for underinsured motorist benefits was proper. Byrd v. Hutchinson, 876 So. 2d 1092 (Miss. Ct. App. 2004).

The statutory definition of an underinsured motorist contained in § 83-11-103(c)(iii) cannot be read in isolation, but must be interpreted in light of other pertinent provisions within the uninsured motorist scheme, such as § 83-11-101(1). Since § 83-11-101(1) prohibits issuance of uninsured coverage in an amount greater than the liability coverage provided for in the policy, in one-vehicle accidents, unless the injured person, as referred to in § 83-11-103(c)(iii), is allowed to stack his or her uninsured motorist coverage with the coverage on the insured motor vehicle, the insured motor vehicle would never be underinsured because the uninsured motorist limits on such a vehicle would never exceed its liability limits. Thiac v. State Farm Mut. Auto. Ins. Co., 569 So. 2d 1217 (Miss. 1990).

A host vehicle, in which a guest passenger was riding when the vehicle left the road and hit a tree, was not an uninsured vehicle for the purposes of § 83-11-103(c)(iii) where the guest passenger had no uninsured coverage of her own and the host vehicle provided liability coverage of $25,000, so that the liability coverage was not less than the guest's uninsured motorist coverage. Although a guest passenger is permitted to stack his or her own uninsured motorist coverage with the uninsured motorist coverage on the host vehicle for the purpose of qualifying the host vehicle as underinsured, the guest passenger was not allowed to stack the host vehicle's policy to qualify the vehicle as underinsured since the guest had no insurance of her own. To allow her to stack the host vehicle's policy for the purposes of determining whether the vehicle was underinsured would be contrary to the legislative purpose in adopting the underinsured motor vehicle concept as part of Mississippi's statutory scheme; the guest passenger could have contracted with her carrier for excess coverage beyond the statutory minimum, thereby rendering the host vehicle underinsured. For the purpose of establishing whether an insured host vehicle is, in fact, underinsured, the court looks no further than the guest passenger's own coverage and the coverage on the host vehicle. Thiac v. State Farm Mut. Auto. Ins. Co., 569 So. 2d 1217 (Miss. 1990).

A tortfeasor did not become an "uninsured motorist" with respect to an injured party such that the injured party's uninsured motorist coverage would apply, where multiple claimants under the tortfeasor's liability policy, other than the injured party, had totally exhausted the available proceeds, but the limit of liability provided by the tortfeasor's insurer was not less than the limit provided by the injured party's own uninsured motorist coverage. Cossitt v. Federated Guar. Mut. Ins. Co., 541 So. 2d 436 (Miss. 1989).

Since combined liability limit of $25,000 under tortfeasor's policy exceeds $20,000 bodily injury limit under plaintiff's uninsured motorist coverage, tortfeasor was not underinsured motorist, as defined in Mississippi Uninsured Motorist Act and plaintiff's policy; thus, neither plaintiff policyholder nor other plaintiffs are eligible for underinsured motorist coverage, notwithstanding that each plaintiff received proceeds under tortfeasor's liability policy in sum less than statutory minimum of $10,000 per person (§ 63-15-43(2)(b)). Herrod v. National Indem. Co., 643 F. Supp. 956 (N.D. Miss. 1986).

6. Beneficiaries; assignment of benefits.

Benefits payable under uninsured motorist insurance policy due to injuries resulting in death of insured need not be paid to persons designated under wrongful death statute (§ 11-7-13), but may be paid to surviving spouse in accordance with "facility of payment" clause. Overstreet v. Allstate Ins. Co., 474 So. 2d 572 (Miss. 1985).

Named insured has no authority to assign to medical provider uninsured motorist benefits under liability insurance policy for injuries received by minor son of insured. McCoy ex rel. McCoy v. Preferred Risk Ins. Co., 471 So. 2d 396 (Miss. 1985).

7. Recovery and elements of damages.

If insurance agent breaches duty to explain uninsured motorist (UM) coverage to insured, damages should not be awarded in amount less than statutory minimum for UM coverage of $10,000, nor in amount more than limits of particular policy in question. Aetna Cas. & Sur. Co. v. Berry, 669 So. 2d 56 (Miss. 1996).

In an action to recover under the uninsured motorist provisions of a decedent's policy brought by the decedent's 2 personal representatives, each representative was not entitled to recover "per person" limits under the policy since the representatives' status as insureds was due to their status as wrongful death beneficiaries under § 11-7-13, which provides a derivative action by the beneficiaries. Thus, the representatives' total recovery was limited to that amount to which the decedent would have been entitled, to be shared equally between them. Wickline v. United States Fid. & Guar. Co., 530 So. 2d 708 (Miss. 1988).

Jury's award of $500 in actual damages to insured motorcyclist who was injured in rear-end collision with uninsured automobile operated by defendant meant that its contractual damages award to the insured of $50,000 against his insurer was excessive by $49,500, in view of policy provision limiting insured's recovery against insurer to amount legally recoverable from owner or operator of uninsured vehicle. Moreover, an award against an insurer of $50,000 which carried with it subrogation rights of $500 was anomalous. Thus, contractual damage award against the insurer was reduced to $500. Employers Mut. Cas. Co. v. Tompkins, 490 So. 2d 897 (Miss. 1986).

This section does not limit uninsured motorist coverage to damages for bodily injury or death, to the exclusion of damages for loss of income; thus, the trial court in an automobile accident case erred in striking the jury's award of $2250 in damages for plaintiff insured's loss of income. Black v. Fidelity & Guar. Ins. Underwriters, Inc., 582 F.2d 984 (5th Cir. 1978).

8. —Aggregating or "stacking" of claims.

Summary judgment was properly granted to two insurers because an employee's uninsured motorist coverage was insufficient to entitle him to uninsured motorist benefits; under Miss. Code Ann. §§ 83-11-101, 83-11-103, the Class II insured had no personal uninsured motorist benefits to stack with a business policy, and an umbrella policy did not count. The following cases were overruled: Glennon v. State Farm Mut. Auto. Ins. Co.; McDaniel v. Shaklee United States, Inc.; State Farm Mut. Auto. Ins. Co. v. Davis; Thiac v. State Farm Mut. Auto. Ins. Co.; Harris v. Magee; Cossitt v. Nationwide Mut. Ins. Co.; Wickline v. United States Fid. & Guar. Co.; Brown v. Md. Cas. Co. Meyers v. Am. States Ins. Co., 914 So. 2d 669 (Miss. 2005).

Statutes such as the Mississippi Uninsured Motorist Act (UM) have to be liberally construed, due in part to their remedial nature; the concept of stacking, or aggregating policies, as a viable method of ensuring complete recovery where the limits of bodily injury liability of one policy were insufficient to cover the costs of the injured party, has begun to gain favor in Mississippi. McDaniel v. Shaklee U.S., Inc., 807 So. 2d 393 (Miss. 2001).

Nothing in uninsured motorist (UM) statute precludes insurer and insured from contractually agreeing to aggregate amount of UM coverage on multiple vehicles even though aggregation exceeds insured's liability coverage limits. United States Fid. & Guar. Co. v. Ferguson, 698 So. 2d 77 (Miss. 1997).

Uninsured motorist (UM) statute, by authorizing insured to demand up to amount of his liability limits in UM coverage, did not bar aggregation of UM coverage on three vehicles under insured's policy, such that insured was entitled to $75,000 in coverage, representing $25,000 limits on each vehicle, even though she carried only $25,000 in liability coverage. United States Fid. & Guar. Co. v. Ferguson, 698 So. 2d 77 (Miss. 1997).

Under Mississippi law, stacking of uninsured motorist (UM) coverage is not mandated by statute, but rather is required in cases where policy is ambiguous concerning whether more than one premium is being charged for more than one UM coverage. Thomas v. Allstate Ins. Co., 969 F. Supp. 1352 (S.D. Miss. 1996).

Under Mississippi law, where insured's three vehicles were covered under same automobile policy, her successors could not stack more than two $10,000 uninsured motorist (UM) coverage limits after insured died in accident involving uninsured motorist, even though insured paid separate premium for liability coverage on each of her three vehicles, where policy contained clear and unambiguous anti-stacking provision and insurer charged this insured and all its insureds only one extra premium for multi-vehicle UM coverage no matter how many vehicles insured owned. Thomas v. Allstate Ins. Co., 969 F. Supp. 1352 (S.D. Miss. 1996).

An insured, who was involved in a motor vehicle accident while driving a vehicle owned by him and insured under a commercial automobile policy issued to his commercial farming operation, was entitled to recover the full $200,000 of underinsured motorist (UM) coverage under his personal automobile policy where he had purchased $100,000 of UM coverage on each of the 2 vehicles under his personal automobile policy, and had a liability limit of $500,000; under the circumstances, the statutory minimum coverage was $200,000 [§ 83-11-101(1)], and thus there was no excess UM coverage which could be subject to the clause in the policy limiting the insurer's stacking exposure. Land v. United States Fid. & Guar. Co., 861 F. Supp. 544 (S.D. Miss. 1994), rev'd on other grounds, 78 F.3d 187 (5th Cir. 1997).

Guest passengers who were in an insured vehicle at the time of a collision with an uninsured motorist were not entitled to stack 5 uninsured motorist coverages sold by the insurer to the owner of the vehicle in which they were passengers where they were Class 2 "insureds" under the policy, and were therefore limited to the uninsured motorist coverage on the vehicle in which they were passengers. Duncan v. Duncan, 634 So. 2d 108 (Miss. 1994).

Guest passenger who is injured while occupant of an underinsured motor vehicle may not recover from uninsured motorist insurance carried by named insured on another vehicle not involved in accident in question, where insurance on such other vehicle is provided under separate insurance policy; such guest passenger is not "insured" and is not entitled to stack coverage under policy. Thomas v. State Farm Mut. Auto. Ins. Co., 796 F. Supp. 231 (S.D. Miss. 1992).

Guest passenger who was injured while an occupant of underinsured motor vehicle may not recover from uninsured motorist insurance carried by named insured on another vehicle not involved in accident, where insurance on such other vehicle is provided under separate insurance policy, as to which injured person is not an insured. Thomas v. State Farm Mut. Auto. Ins. Co., 796 F. Supp. 231 (S.D. Miss. 1992).

In a wrongful death action brought by the parents of a passenger who was killed in a motor vehicle accident, the parents were entitled to receive only the uninsured motor vehicle (UM) coverage provided by their own policies and the policy covering the accident vehicle, and were not entitled to the UM coverage provided by 2 other insurance policies issued to the owners of the accident vehicle which covered 2 other automobiles; the parents were entitled to stack the UM coverage provided by the policies in which the passenger met the definition of an "insured" either under the terms of the policy and/or the UM statute, and the passenger was an "insured" only under the policy covering the accident vehicle since she was a guest passenger in that vehicle but was not a guest passenger in either of the other 2 vehicles covered under the other policies issued to the owners. State Farm Mut. Auto. Ins. Co. v. Davis, 613 So. 2d 1179 (Miss. 1992).

An insured was not entitled to stack uninsured motorist coverages where the policies providing the coverages prohibited stacking of coverages in excess of the statutory minimum. Casualty Reciprocal Exch. v. Federal Ins. Co., 608 So. 2d 1258 (Miss. 1992).

A trial court properly allowed a second class permissive user to stack insured motorist benefits under his employer's commercial fleet policy. Mississippi's statutory scheme does not distinguish a "commercial fleet policy" from any other type of automobile insurance policy, nor is it defined therein, and therefore there is no statutory basis for distinguishing a commercial fleet policy. Harris v. Magee, 573 So. 2d 646 (Miss. 1990).

A Class II insured who was using his employer's insured vehicle at the time of the accident was entitled to stack uninsured motorist benefits under his employer's commercial fleet policy. There is no basis for distinguishing a "commercial fleet policy" from any other type of auto insurance policy. Uninsured motorist coverage is designed to provide innocent injured motorists a means to recover all sums to which they are entitled from an uninsured motorist. The statute is to be liberally construed so as to achieve compensation. Uninsured motorist coverage is available to an injured insured until all sums which he or she is entitled to recover from the uninsured motorist have been recovered. Section 83-11-103 specifically refers to use of a "motor vehicle," which indicates that stacking is necessarily limited to those "motor vehicles" listed in the schedule of covered vehicles. Harris v. Magee, 573 So. 2d 646 (Miss. 1990).

Persons travelling in a church-owned bus on a church outing were entitled to stack the coverage under 3 uninsured motorist policies held by the church on the 3 buses owned by it; the policy was not considered to be a fleet policy. Cossitt v. Nationwide Mut. Ins. Co., 551 So. 2d 879 (Miss. 1989).

A "Class 2 Occupancy Insured" (a person who uses, with the consent of the named insured, the motor vehicle to which the insurance policy applies) is entitled to stack the coverages held by the named insured under his or her uninsured motorist policy. Brown v. Maryland Cas. Co., 521 So. 2d 854 (Miss. 1987).

Although he was "insured" within meaning of uninsured motorist policy, husband of woman injured in accident could not collect for loss of consortium as claim was subject to per person limitation applicable to wife's claim; husband was not entitled to stack uninsured motorist coverage of two separate policies. Reid v. State Farm Mut. Auto. Ins. Co., 784 F.2d 577 (5th Cir. 1986).

Although insurer's maximum liability is aggregate of all uninsured motorist policies under which injured person is covered, "per person" limitations in policies refer to injured person only, not to persons who may make claim under policy. State Farm Mut. Auto. Ins. Co. v. Eubanks, 620 F. Supp. 17 (N.D. Miss. 1985), aff'd, 785 F.2d 1346 (5th Cir. 1986).

Motorist who has uninsured motorist benefits under 2 insurance policies covering 2 vehicles who is severely injured when hit by uninsured motorist while driving one of insured vehicles is limited to recovery of $10,000 where each policy provides for uninsured motorist coverage in that amount. State Farm Mut. Auto. Ins. Co. v. Acosta, 479 So. 2d 1089 (Miss. 1985).

The $10,000 coverage afforded by the uninsured motorist endorsements to three separate liability policies issued by the same insurer to the same insured could be aggregated to cover damages for bodily injuries suffered by the minor son of the insured as a proximate result of the negligence of an uninsured motorist. Southern Farm Bureau Cas. Ins. Co. v. Roberts, 323 So. 2d 536 (Miss. 1975).

9. —Exclusion of or offset against benefits payable under other provisions or policies.

Vehicle insurance provision stating that no insured for whom medical expenses were payable could recover more than once for the same medical expense was not an attempt to reduce the minimum amount of uninsured motor vehicle (UM) coverage required under Mississippi law, and thus the provision prevented an insured from recovering double medical expenses under the UM and medical payment coverage provisions of her policy. Welborn v. State Farm Mut. Auto. Ins. Co., — F.3d —, 2007 U.S. App. LEXIS 4871 (5th Cir. Feb. 6, 2007).

Grant of summary judgment in favor of the insurer in the operator's action concerning an offset against the insurer's uninsured motorist coverage limits was proper pursuant to the Uninsured Motorist Act (Act), Miss. Code Ann. § 83-11-101 et seq., where the operator received $ 600,000 from another insurer and had therefore already received far more than the minimum $ 10,000 contracted for and required by the Act. Additionally, the offset clause did not provide an offset for sums paid to parties other than the operator. Jeffcoat v. Am. Nat'l Prop. & Cas. Co., 919 So. 2d 982 (Miss. Ct. App. 2005).

Where an injured guest-passenger's uninsured or underinsured motorist (UM) policy only allowed the insurer to offset amounts actually paid by it, the host driver's UM insurer was entitled to take its contractual liability insurance offset before the injured passenger's UM insurer, and the passenger's insurer was not entitled to pro-ration of the offset provision of the driver's policy. Dixie Ins. Co. v. State Farm Mut. Auto. Ins. Co., 614 So. 2d 918 (Miss. 1992).

A workers' compensation carrier, which was also the uninsured motorist carrier, was not entitled to a credit on behalf of a deceased employee, where the employee's beneficiary had failed to recover anything from the party responsible for the employee's death. Harris v. Magee, 573 So. 2d 646 (Miss. 1990).

Provision in automobile liability insurance policy providing that amounts payable under uninsured motorist insurance shall be reduced by amount paid and present value of all amounts payable under any workmen's compensation law, disability benefits law or similar law cannot reduce uninsured motorist benefits below statutory minimum, however, such provision can be applied to supplemental benefits, as Miss. Code Annotated § 83-11-111 provides that any coverage in excess of coverage required by law shall not be subject to provisions of law, such that supplemental benefits may be reduced by amounts received under worker's compensation law. Porter v. Shelter Gen. Ins. Co., 678 F. Supp. 151 (S.D. Miss. 1988).

Although insurer may not reduce uninsured motorist benefit below statutory minimum because of workers' compensation benefits, provision in insurance policy which allows insurer to reduce all of uninsured motorist benefits in excess of statutory minimum for any amounts received as workers' compensation is permissible. Porter v. Shelter Gen. Ins. Co., 678 F. Supp. 151 (S.D. Miss. 1988).

Under Mississippi law, parties are free to contract for supplemental benefits as they see fit so long as uninsured motorist benefits do not exceed liability benefits and insurance policy provision for reduction of supplemental uninsured motorist benefits because of workers' compensation received by beneficiary is enforceable with regard to those benefits, although benefits may not be reduced below minimum required by statute. Section 83-11-111 provides that any coverage in excess of coverage required by that article "shall not be subject to provisions of this article" except as provided. Porter v. Shelter Gen. Ins. Co., 678 F. Supp. 151 (S.D. Miss. 1988).

Clause in uninsured motorist provision of automobile insurance policy providing that insured may not recover for expenses for medical services payable under separate provision of policy does not reduce policy's uninsured motorist limit below statutory minimum, but merely provides that insured would not be paid for medical expenses twice, once under medical payment coverage and again under uninsured motorist provision. Tucker v. Aetna Cas. & Sur. Co., 801 F.2d 728 (5th Cir. 1986), reh'g denied, 805 F.2d 1030 (5th Cir. 1986).

Although automobile of tortfeasor who carries liability insurance in amount less than amount of coverage available to injured person under that person's uninsured motorist provisions of injured person's policies is "uninsured motor vehicle" by statutory definition (§ 83-11-103), uninsured motorist coverage may be reduced by offset for sums paid by another company on behalf of under-insured driver where uninsured motorist provision so provides. State Farm Mut. Auto. Ins. Co. v. Eubanks, 620 F. Supp. 17 (N.D. Miss. 1985), aff'd, 785 F.2d 1346 (5th Cir. 1986).

In creating underinsured motorist coverage by amendment of § 83-11-103, legislature did not intend to abrogate rights of underinsured motorist carriers to subrogation as provided in § 83-11-107 and, therefore, underinsured motorist carrier may be allowed offset for payments by underinsured tortfeasor's liability carrier. State Farm Mut. Auto. Ins. Co. v. Kuehling, 475 So. 2d 1159 (Miss. 1985).

An insurance company may not validly offset payments made pursuant to uninsured motorist coverage against payments due under the bodily injury liability provision of the same policy, and a policy clause permitting such offset was void as against public policy. Missouri Gen. Ins. Co. v. Youngblood, 515 F.2d 1254 (5th Cir. 1975).

Where a passenger on a motorcycle uninsured as to her, which was involved in an intersection collision with an automobile, the fact that the injured plaintiff recovered damages under the bodily injury coverage of the automobile driver's liability policy, did not extinguish the uninsured motorist coverage provided by both the automobile liability policy of the passenger's husband, in whose household she lived, and the policy covering the motorcycle involved in the accident. Harthcock v. State Farm Mut. Auto. Ins. Co., 248 So. 2d 456 (Miss. 1971).

10. —Punitive damages.

Uninsured motorist coverage provision of automobile liability policy need not cover punitive damages that insured would be legally entitled to collect from uninsured motorist; nor does uninsured motorist endorsement providing that insurer will pay damages for bodily injury and property damage cover punitive damages. State Farm Mut. Auto. Ins. Co. v. Daughdrill, 474 So. 2d 1048 (Miss. 1985), answer to certified question conformed to, 769 F.2d 1070 (5th Cir. 1985).

The federal court of appeals would certify to the Mississippi Supreme Court the question whether the uninsured motorist coverage provision of an automobile liability policy issued to a person resident in Mississippi covers punitive damages that the insured would be entitled to collect from the uninsured motorist, where neither the Mississippi Supreme Court nor any Mississippi appellate court had decided the significant question. State Farm Mut. Auto. Ins. Co. v. Daughdrill, 695 F.2d 141 (5th Cir. 1983), question certified, 702 F.2d 70 (5th Cir. 1983), certified question answered, 474 So. 2d 1048 (Miss. 1985), answer to certified question conformed to, 769 F.2d 1070 (5th Cir. Miss. 1985).

11. Applicability to particular vehicles.

Where an employee was injured in a car accident with an uninsured motorist while in the scope of employment and using the employee's own car, the limitation on uninsured motorist coverage solely to vehicles owned by the employer was effective, having been requested in writing, and summary judgment on the employee's bad faith claim was properly granted to the employer's insurer . Trotter v. Fed. Ins. Co., 865 So. 2d 411 (Miss. Ct. App. 2004).

Farm tractor is not vehicle designed for use mainly on public roads and is instead vehicle designed mainly for use off public roads. Wilcher v. Michigan Mut. Ins. Co., 691 F. Supp. 1019 (S.D. Miss. 1988).

12. When cause of action accrues.

A father's cause of action against his insurance company under the uninsured motorist provisions of his policy, for injuries to his son, an occupant in a one-car accident, did not accrue until the appellate court issued its opinion affirming the trial court's judgment in a prior action by the father against the driver that the driver of the vehicle was not insured, and the action thus was not barred by the six-year limitation period. Vaughn v. State Farm Mut. Auto. Ins. Co., 445 So. 2d 224 (Miss. 1984).

13. Which state's law applies.

In a dispute over the payment of uninsured motorist benefits, a trial court properly applied the center of gravity test in determining that Tennessee law applied because the contract was made in Tennessee, negotiations took place there, and an insured resided there, despite the fact that an accident took place in Mississippi. Owens v. Miss. Farm Bureau Cas. Ins. Co., 910 So. 2d 1065 (Miss. 2005).

As predicted by Court of Appeals, Mississippi legislature did not intend that Mississippi's Uninsured Motorist Act (UM Act) would provide Mississippians worldwide uninsured motorist (UM) coverage; thus, UM policy that limited recovery to losses occurring within United States (and its territories and possessions), Canada, and Puerto Rico, did not violate Mississippi public policy. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248 (5th Cir. 1997).

As predicted by Court of Appeals, Mississippi's Uninsured Motorist Act (UM Act) is subject to same territorial restrictions found in Mississippi Safety Responsibility Act. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248 (5th Cir. 1997).

There is no public policy in Mississippi that would preclude enforcement of exclusionary clause of uninsured motorist provision of insurance contract which is made and entered into in Nebraska between Nebraska insured and nationwide insurer based in San Antonio, Texas, particularly where party seeking to recover under insurance contract is not resident of Mississippi at controlling time. Boardman v. United Servs. Auto. Ass'n, 470 So. 2d 1024 (Miss. 1985), answer to certified question conformed to, 768 F.2d 718 (5th Cir. 1985), cert. denied, 474 U.S. 980, 106 S. Ct. 384, 88 L. Ed. 2d 337 (1985).

Vehicle ownership question in action brought in Mississippi under uninsured motorist provision of insurance contract will be determined in accordance with Mississippi law, even though other issues are determined under law of another state, where owning of vehicle appears to have occurred exclusively in Mississippi. Boardman v. United Servs. Auto. Ass'n, 470 So. 2d 1024 (Miss. 1985), answer to certified question conformed to, 768 F.2d 718 (5th Cir. 1985), cert. denied, 474 U.S. 980, 106 S. Ct. 384, 88 L. Ed. 2d 337 (1985).

In construing automobile insurance contract containing uninsured motorist provision, Mississippi court will deem Nebraska to be state with most significant contact with insurance policy for choice of law purposes where contract is made and entered in state of Nebraska, insured persons under contract are residents of Nebraska, principal location of risks insured against is in Nebraska, and Mississippi's contact with contract and parties are fortuitous, arising from fact that son of insured has taken summer job in Mississippi. Boardman v. United Servs. Auto. Ass'n, 470 So. 2d 1024 (Miss. 1985), answer to certified question conformed to, 768 F.2d 718 (5th Cir. 1985), cert. denied, 474 U.S. 980, 106 S. Ct. 384, 88 L. Ed. 2d 337 (1985).

14. Prerequisites to bringing suit against insurer.

Summary judgment was properly awarded to an insurance agency and an insurer in an insured's action alleging that she was wrongfully denied uninsured motorist coverage where the insured failed to meet the requirements of requesting uninsured motorist coverage for a renewal policy in writing under Miss. Code Ann. § 83-11-101(2). Jones v. Southern United Fire Ins., 935 So. 2d 1127 (Miss. Ct. App. 2006).

Mississippi Supreme Court rejects and overrules the implication in Aetna Casualty & Surety Co. v. Berry, 669 So. 2d 56 (Miss. 1996), that an insurance agent has the absolute, court-created duty to explain an insured's right to purchase additional uninsured motorist coverage, over and above the amount of coverage required by Miss. Code Ann. § 83-11-101. Owens v. Miss. Farm Bureau Cas. Ins. Co., 910 So. 2d 1065 (Miss. 2005).

Language in the uninsured motorist statute, Miss. Code Ann. § 83-11-101, as well as the insured's UM policy, required that the insured be legally entitled to recover from the owner or operator of the uninsured vehicle; since that insured could not bring a legal action against the co-employee at the time of the accident, he was not entitled to recover UM benefits from his insurer. Steen v. Metro. Prop. & Cas. Ins. Co., 858 So. 2d 186 (Miss. Ct. App. 2003).

In respect to third party claim brought by uninsured motorist insurer against agent for allegedly uninsured motorist, claiming negligence by agent in failing to provide liability coverage which would have offset amounts uninsured carrier was required to pay arising out of accident, there was no controversy between uninsured motorist carrier and agent, as required in order to sustain declaratory judgment action to establish negligence of agent. Byrd v. Principal Cas. Ins. Co., 781 F. Supp. 1177 (S.D. Miss. 1991).

In an action against an insurer to collect under an uninsured motorist clause, the burden rested upon the plaintiff to prove that the other driver had been an uninsured motorist, that the plaintiff was a member of the named insured's household and was driving her car with the named insured's consent, that while driving the car she was involved in a collision as the proximate result of negligence on the other driver's part, and that she sustained an injury as to the result. State Farm Fire & Cas. Co. v. Wightwick, 320 So. 2d 373 (Miss. 1975).

It is not necessary to sue first the faulting motorist in order to establish liability under the uninsured motorist clause in a policy, but suit may be brought directly against the insurance company under its insurance contract in the first instance. Rampy v. State Farm Mut. Auto. Ins. Co., 278 So. 2d 428 (Miss. 1973).

An insured, under uninsured motorist coverage, may bring a direct action against the insurer, and need not first establish the liability of the uninsured motorist in a prior suit. Harthcock v. State Farm Mut. Auto. Ins. Co., 248 So. 2d 456 (Miss. 1971).

It was the intent of the legislature that the legal liability of a known uninsured motorist to the insured should be ascertained in an appropriate forum before bringing of a suit against the insurance company under such coverage, and this conclusion works no great hardship on the insured because, once a judgment has been obtained against the uninsured motorist, it would only be necessary to show the existence of coverage by the insurance company to entitle the insured to a judgment against the company. Logan v. Aetna Cas. & Sur. Co., 309 F. Supp. 402 (S.D. Miss. 1970).

RESEARCH REFERENCES

ALR. Validity, construction, and application of provision of automobile liability policy excluding from coverage injury or death of member of family or household of insured. 46 A.L.R.3d 1024.

Validity, construction, and application of provision of automobile liability policy excluding from coverage injury or death of insured. 46 A.L.R.3d 1061.

Construction of statutory provision governing rejection or waiver of uninsured motorist coverage. 55 A.L.R.3d 216.

What constitutes an "automobile" for purposes of uninsured motorist provisions. 65 A.L.R.3d 851.

Conflict of laws as to right of insured to maintain under uninsured motorist clause a direct action against automobile liability insurer. 83 A.L.R.3d 308.

Automobile liability policy: choice of law as to validity of "other insurance" clause of uninsured motorist coverage. 83 A.L.R.3d 321.

Validity of exclusion in automobile insurance policy precluding recovery of no-fault benefits for injuries arising out of the ownership, maintenance, or use of an uninsured vehicle owned by an insured. 18 A.L.R.4th 632.

Uninsured motorist endorsement: validity and enforceability of policy provision purporting to authorize deduction of no-fault benefits from amounts payable under uninsured motorist endorsement. 20 A.L.R.4th 1104.

Uninsured and underinsured motorist coverage: recoverability, under uninsured or underinsured motorist coverage, of deficiencies in compensation afforded injured party by tortfeasor's liability coverage. 24 A.L.R.4th 13.

Right to recover under uninsured or underinsured motorist insurance for injuries attributable to joint tortfeasors, one of whom is insured. 24 A.L.R.4th 63.

Applicability of uninsured motorist statutes to self-insurers. 27 A.L.R.4th 1266.

Right of insurer issuing "uninsured motorist" coverage to intervene in action by insured against uninsured motorist. 35 A.L.R.4th 757.

Motorist having "no-fault" insurance affording no liability coverage in circumstances as "uninsured" or "underinsured" motorist under damaged party's insurance. 40 A.L.R.4th 1202.

Injury or death caused by assault as within coverage of no-fault motor vehicle insurance. 44 A.L.R.4th 1010.

Uninsured motorist insurance: injuries to motorcyclist as within affirmative or exclusionary terms of automobile insurance policy. 46 A.L.R.4th 771.

Validity, under insurance statutes, of coverage exclusion for injury to or death of insured's family or household members. 52 A.L.R.4th 18.

Punitive damages as within coverage of uninsured or underinsured motorist insurance. 54 A.L.R.4th 1186.

Right of insured, precluded from recovering against owner or operator of uninsured motor vehicle because of governmental immunity, to recover uninsured motorist benefits. 55 A.L.R.4th 806.

Automobile uninsured motorist coverage: "legally entitled to recover" clause as barring claim compensable under workers' compensation statute. 82 A.L.R.4th 1096.

Insured's recovery of uninsured motorist claim against insurer as affecting subsequent recovery against tortfeasors causing injury. 3 A.L.R.5th 746.

Uninsured or underinsured motorist insurance: validity and construction of policy provision purporting to reduce recovery by amount of social security disability benefits or payments under similar disability benefits law. 24 A.L.R.5th 766.

Uninsured and underinsured motorist coverage: validity, construction, and effect of policy provision purporting to reduce coverage by amount paid or payable under workers' compensation law. 31 A.L.R.5th 116.

Validity and construction of provision of uninsured or underinsured motorist coverage that damages under the coverage will be reduced by amount of recovery from tortfeasor. 40 A.L.R.5th 603.

Automobile insurance coverage for drive-by shootings and other incidents involving the intentional discharge of firearms from moving motor vehicles. 41 A.L.R.5th 91.

Uninsured motorist indorsement: construction and application of requirement that there be "physical contact" with unidentified or hit-and-run vehicle; "miss-and-run" cases. 77 A.L.R.5th 319.

Uninsured motorist indorsement: general issues regarding requirement that there be "physical contact" with unidentified or hit-and-run vehicle. 78 A.L.R.5th 341.

Uninsured motorist indorsement: construction and application of requirement that there be "physical contact" with unidentified or hit-and-run vehicle; "hit-and-run" cases. 79 A.L.R.5th 289.

Am Jur. 7 Am. Jur. 2d, Automobile Insurance §§ 135 et seq.

CJS. 45 C.J.S., Insurance § 1199.

Law Reviews. 1979 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 813, December 1979.

Phillips, A Guide to Uninsured Motorist Insurance Law in Mississippi. 52 Miss. L. J. 255, June 1982.

Insurance: Enforceability of Automobile Business Exclusion to Automobile Liability Coverage, 53 Miss. L. J. 205, March 1983.

1984 Mississippi Supreme Court Review: Insurance. 55 Miss. L. J. 128, March, 1985.

1985 Mississippi Supreme Court Review-Miscellaneous. 55 Miss. L. J. 827, December 1985.

Sclafani, Stacking the Deck Against the Insurance Industry: United States Fidelity and Guaranty Company v. Ferguson 698 So. 2d 77 (Miss. 1997), 19 Miss C.L. Rev. 251 (Fall, 1998).

Comment: Uninsured motorist insurance, the commercial fleet policy, and Harris v. Magee : a modest proposal for change. 61 Miss. L. J. 171 Spring 1991.

Craig, Recent Decision: Automobile Insurance—Uninsured Motorists—Public Policy Demands that Anti-Stacking Provisions be Held Void as Against Public Policy. 67 Miss. L. J. 585, Winter, 1997.

Recent Decision: Automobile Insurance—Mississippi Uninsured Motorist Statute—Actual Physical Contact Required Where Claim Involves Unidentified Motorist, 72 Miss. L.J. 1121, Spring, 2003.

Note: Insurance Without Assurance: Stacking Uninsured/Underinsured Motorist Coverage Under Commercial Fleet Policies After Mascarella v. United States Fidelity and Guaranty Company, 23 Miss. C. L. Rev. 157, Spring, 2004.

Practice References. Automobile Insurance Step-Down Provisions (LexisNexis).

Business Law Monographs, Volume IN2 — Casualty and Liability Insurance (Matthew Bender).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-11-102. Purchase of single-limit, nonstacking uninsured motorist insurance coverage for 10 or more vehicles in lieu of uninsured motorists coverage for each vehicle.

(1) An insured in an automobile liability policy that covers ten (10) or more vehicles may elect to purchase, and an insurer may offer, single-limit, nonstacking uninsured motorist insurance coverage covering all vehicles listed in the policy for a single amount of uninsured motorist coverage. The single uninsured motorist coverage limit must be in an amount of no less than the liability limits required under the Mississippi Motor Vehicle Safety Responsibility Law for ten (10) vehicles combined. No matter how many vehicles are listed in or covered by the policy, the policy shall provide only one (1) single limit of uninsured motorist coverage to an injured person, or for property damage, or both, for any one (1) accident. The single limit of uninsured motorist coverage provided by the single-limit, nonstacking uninsured motorist insurance coverage may, where appropriate, be aggregated with or stacked with uninsured motorist insurance coverage available from other policies.

(2) In the course of the sale or issuance of single-limit, nonstacking uninsured motorist insurance coverage, insurers shall inform the named insured or applicant, on a form approved by the Department of Insurance, of the limitation on stacking imposed and that such coverage is an alternative to coverage without such limitation, and such form shall be signed by or on behalf of the named insured or applicant. If this form is signed by or on behalf of a named insured or applicant, it is binding upon all persons insured by the uninsured motorist coverage and it shall be presumed that there was an informed, knowing acceptance of such limitation. When the named insured or applicant has initially accepted such limitation on stacking, such acceptance shall apply to any policy from the same insurer, including sister insurers in the same holding company, which renews the coverage, extends the coverage or changes covered vehicles unless and until the named insured requests in writing a change to stackable uninsured motorist coverage. Endorsements to the coverage language that do not change the uninsured motorist coverage language shall not be considered a new policy for purposes of determining whether a new acceptance form is necessary.

SOURCES: Laws, 2002, ch. 390, § 1, eff from and after July 1, 2002.

Cross References — Mississippi Motor Vehicle Safety Responsibility Law, see §§ 63-15-1 et seq.

§ 83-11-103. Definitions.

As used in this article:

(a) The term "bodily injury" shall include death resulting from such injury.

(b) The term "insured" shall mean the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies, and a guest in such motor vehicle to which the policy applies, or the personal representative of any of the above. The definition of the term "insured" given in this section shall apply only to the uninsured motorist portion of the policy.

(c) The term "uninsured motor vehicle" shall mean:

(i) A motor vehicle as to which there is no bodily injury liability insurance; or

(ii) A motor vehicle as to which there is such insurance in existence, but the insurance company writing the same has legally denied coverage thereunder or is unable, because of being insolvent at the time of or becoming insolvent during the twelve (12) months following the accident, to make payment with respect to the legal liability of its insured; or

(iii) An insured motor vehicle, when the liability insurer of such vehicle has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under his uninsured motorist coverage; or

(iv) A motor vehicle as to which there is no bond or deposit of cash or securities in lieu of such bodily injury and property damage liability insurance or other compliance with the state financial responsibility law, or where there is such bond or deposit of cash or securities, but such bond or deposit is less than the legal liability of the injuring party; or

(v) A motor vehicle of which the owner or operator is unknown; provided that in order for the insured to recover under the endorsement where the owner or operator of any motor vehicle which causes bodily injury to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured; or

(vi) A motor vehicle owned or operated by a person protected by immunity under the Mississippi Tort Claims Act, Title 11, Chapter 46, Mississippi Code of 1972, if the insured has exhausted all administrative remedies under that chapter.

No vehicle shall be considered uninsured that is owned by the United States government and against which a claim may be made under the Federal Tort Claims Act, as amended.

SOURCES: Codes, 1942, § 8285-52; Laws, 1966, ch. 524, § 2; Laws, 1979, ch. 429, § 1; Laws, 2009, ch. 451, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment added (c)(vi); and made a minor stylistic change.

Cross References — Application of this section to the exemption from liability of volunteers and sports officials, see § 95-9-5.

Federal Aspects — Federal Tort Claims Act, see 28 USCS §§ 1346 et seq., 2671 et seq.

JUDICIAL DECISIONS

1. In general.
2. Beneficiaries.
3. Exclusion of or offset against benefits payable under other provisions or policies.
4. "Actual physical contact."
5. Exhaustion of proceeds available under policy.
6. Aggregating or "stacking" of benefits.
7. Applicability to farm tractors.
8. Uninsured motorist.
9. Miscellaneous.

1. In general.

Summary judgment was improperly granted to an employer's uninsured motorist insurer in a coverage action brought an employee who was attacked by a former boyfriend when she was getting into her company vehicle because a factual dispute existed as to whether the employee was an insured as defined under Miss. Code Ann. § 83-11-103(b). Thomas v. Jones, 23 So. 3d 575 (Miss. Ct. App. 2009).

Where a passenger was injured, the passenger did not demonstrate that the insured driver was an underinsured motorist under the standard set forth by the Mississippi Supreme Court, which required a comparison of the tortfeasor's liability coverage and the personal coverage carried by, or available to the injured party, nor did the passenger demonstrated good reason to abandon that standard; thus, summary judgment for the insurer on the passenger's claim for underinsured motorist benefits was proper. Byrd v. Hutchinson, 876 So. 2d 1092 (Miss. Ct. App. 2004).

Insureds were entitled to uninsured motorist benefits where a motorist's single liability limit of $ 300,000 was equivalent to a per-accident limit; comparing the motorist's limit to the per-accident limit, rather than the per-person limit, of the insureds' policy, the motorist's vehicle was considered an underinsured motor vehicle under Miss. Code Ann. § 83-11-103(c)(iii). Wise v. United Servs. Auto. Ass'n, 861 So. 2d 308 (Miss. 2003).

As a permissive user of an employer's insured automobile, the insured was within the Miss. Code Ann. § 83-11-103(b) definition of an "insured," and was therefore entitled to uninsured motorist coverage under the insurer's policy; the policy provision was therefore an invalid basis for the denial of uninsured motorist coverage to the insured. Owen v. Universal Underwriters Ins. Co., 252 F. Supp. 2d 324 (S.D. Miss. 2003).

Where school bus was not yet in sight, the children had not begun the boarding of the bus simply by waiting for it at the bus stop; as children were not using the bus, they were not insureds under the policy and were not entitled to underinsured motorist benefits. Walley v. Coregis Ins. Co., 822 So. 2d 902 (Miss. 2002).

The six year old plaintiff was an "insured" within the meaning of the statute where he was struck by an uninsured vehicle while he was walking from his home to board a parked school bus 141 feet away. Johnson ex rel. Blocket v. United States Fid. & Guar. Ins. Co., 726 So. 2d 167 (Miss. 1998).

The plaintiff's decedent, an employee of a tire store, was riding in a "covered vehicle" because it was a vehicle insured under the liability provisions of the policy at issue. Crane v. Liberty Mut. Ins. Co., 19 F. Supp. 2d 654 (S.D. Miss. 1998).

Plan of self-insurance is not "liability insurance' for purpose of determining whether tort-feasor is "uninsured motorist' under Uninsured Motorist Act. Perry ex rel. Perry v. Nationwide Gen. Ins. Co., 700 So. 2d 600 (Miss. 1997).

In determining whether tortfeasor is properly considered to be uninsured motorist with regard to particular uninsured motorist (UM) insured, limits of tortfeasor's liability insurance, rather than amount actually available to particular UM insured, should be compared to stacked total of UM benefits applicable to UM insured. Fidelity & Guar. Underwriters, Inc. v. Earnest, 699 So. 2d 585 (Miss. 1997).

Driver who was friend of named insureds was not "insured" and, therefore, was not entitled to uninsured motorist (UM) benefits under policies on vehicles not involved in accident; policies defined "insured" to mean permissive user or guest while occupying insured automobile, and driver was not permissible driver of any vehicles not involved in accident. Mississippi Farm Bureau Cas. Ins. Co. v. Curtis, 678 So. 2d 983 (Miss. 1996).

Mississippi Municipal Liability Plan of self-insurance, authorized by § 11-46-17(5), is not "insurance" within meaning of § 83-11-103(c)(i), which defines uninsured motor vehicle to include vehicle to which there is no bodily injury liability insurance. Coleman v. American Mfrs. Mut. Ins. Co., 930 F. Supp. 255 (N.D. Miss. 1996).

Section 83-11-103(c)(iv), which defines uninsured motor vehicle to include vehicle to which there is no bond or deposit of cash or securities or other compliance with financial responsibility law (§ 63-15-5), does not apply to municipal vehicle; "bond or deposit of cash" referred to in statute must be more than reserve of funds set aside such as bank account or monies placed with Mississippi Municipal Liability Plan, but must actually comply with financial responsibility law. Coleman v. American Mfrs. Mut. Ins. Co., 930 F. Supp. 255 (N.D. Miss. 1996).

In determining whether a person is a "resident" of an insured's household for purposes of uninsured motorist coverage, the court should consider: (1) the subjective or declared intent of the person remaining, either permanently or for an indefinite or unlimited period, in the place he or she contends is his or her "household," (2) the formality or informality of the relationship between such person and the members of the household, and (3) whether the person alleging his or her residence to be a particular household has another place of lodging; however, one may have more than one "residence," making that person a "resident" of more than one locale. Johnson v. Preferred Risk Auto. Ins. Co., 659 So. 2d 866 (Miss. 1995).

Married adults were "residents" of their respective parents' households on the date of an accident for purposes of uninsured motorist coverage, even though they were only temporarily staying with their respective parents until such time as they could move, and they had plans to move to a house in another state later that month (overruling Goens v. Arinder (Miss. 1964) 161 So. 2d 509). Johnson v. Preferred Risk Auto. Ins. Co., 659 So. 2d 866 (Miss. 1995).

Under the Mississippi Uninsured Motorist Act (§§ 83-11-101 et seq), a minor child of divorced parents may be considered a "resident of the same household" of both parents, since a child is a resident of both parents' households until he or she reaches the age of majority or becomes fully emancipated. Aetna Cas. & Sur. Co. v. Williams, 623 So. 2d 1005 (Miss. 1993).

Under §§ 83-11-101 and 83-11-103, when an automobile owner accepts an insurer's offer of uninsured motorist coverage, both the owner and his or her guests are insured for bodily and property damage arising from the negligent operation of an uninsured vehicle. Brown v. Hartford Ins. Co., 606 So. 2d 122 (Miss. 1992).

An insured's father, mother and sister were not "insureds" within the uninsured motorist coverage of the insured's automobile insurance policy where the father, mother and sister did not reside in the same household with the insured, and therefore were not "relatives" within the meaning of the policy; since nothing in the policy expanded the word "insured" beyond the statutory definition found in § 83-11-103(b), which defines the term "insured" as a "resident of the same household," the statutory definition controlled. Gunn v. Principal Cas. Ins. Co., 605 So. 2d 741 (Miss. 1992).

As prerequisite to successful claim for underinsured motorist benefits, plaintiffs must establish that insured motor vehicle is, in fact, underinsured. Coomes v. State Farm Mut. Auto. Ins. Co., 788 F. Supp. 916 (S.D. Miss. 1992).

Despite contention of insured that she was seeking payment of "excess" insurance coverage rather than underinsured motorist coverage, insurer was not required to pay under policy provision stating that "coverage applies as excess to any uninsured motor vehicle coverage," where vehicle in which insured was riding when she incurred injuries was neither uninsured nor underinsured; coverage applied as excess coverage only when insurance policy's uninsured motorist coverage was invoked, and simply did not apply in absence of uninsured motor vehicle. Coomes v. State Farm Mut. Auto. Ins. Co., 788 F. Supp. 916 (S.D. Miss. 1992).

A tortfeasor whose automobile struck a vehicle driven by an insured was an "uninsured motorist" for subrogation purposes under the Uninsured Motorist Act pursuant to § 83-11-103(c)(iii), even though the tortfeasor was "underinsured" in fact. St. Paul Property & Liab. Ins. Co. v. Nance, 577 So. 2d 1238 (Miss. 1991).

An employee was "using" an insured vehicle at the time of an accident, and was therefore an "insured" under an automobile liability policy, where the employee was driving the insured truck to a job site when he stopped on the highway to assist in the repair of a disabled company crane, he exited the truck and crawled beneath the crane to determine if it could be repaired, and he was struck by a van driven by an uninsured motorist as he was crawling from beneath the crane. Directing and assisting his co -employees in repairing the disabled crane that was crucial to the performance of their job was a necessary part of the employee's duties as a foreman, and the employee could only accomplish this part of his job by removing himself from the insured truck. Stopping to repair the crane was a necessary aspect of the truck's operation, and it could not be said that temporarily exiting the insured vehicle constituted an abandonment of its use. Harris v. Magee, 573 So. 2d 646 (Miss. 1990).

An employee who was using his employer's vehicle with the consent of the employer was not a "named insured" for purposes of uninsured motorist coverage, but rather was a Class II insured. Harris v. Magee, 573 So. 2d 646 (Miss. 1990).

The statutory definition of an underinsured motorist contained in § 83-11-103(c)(iii) cannot be read in isolation, but must be interpreted in light of other pertinent provisions within the uninsured motorist scheme, such as § 83-11-101(1). Since § 83-11-101(1) prohibits issuance of uninsured coverage in an amount greater than the liability coverage provided for in the policy, in one-vehicle accidents, unless the injured person, as referred to in § 83-11-103(c)(iii), is allowed to stack his or her uninsured motorist coverage with the coverage on the insured motor vehicle, the insured motor vehicle would never be underinsured because the uninsured motorist limits on such a vehicle would never exceed its liability limits. Thiac v. State Farm Mut. Auto. Ins. Co., 569 So. 2d 1217 (Miss. 1990).

Insurance company has no liability to insured under uninsured motorist provisions of insured's automobile policy where insurance companies against whom insured made claims did not deny coverage to their insureds, but simply denied liability to plaintiff insured under facts of accident; insured may recover under her policy if, in accordance with § 83-11-103(c)(iii), she establishes that one of two parties with which she was involved in accident, which party was underinsured, was negligent, that that party's negligence was sole proximate cause of insured's damages, and that insured's damages are in excess of party's limit of liability. Allstate Ins. Co. v. Hilbun, 703 F. Supp. 533 (S.D. Miss. 1988).

Uninsured motorist coverage is available despite exclusion in policy that insured vehicle cannot be uninsured so as to prevent insured claiming uninsured motorist benefit after being denied recovery based on other policy exclusions, such as household exclusion; uninsured motorist coverage may be stacked. Allstate Ins. Co. v. Randall, 753 F.2d 441 (5th Cir. 1985).

Where an insured, who was injured while riding as a passenger in her own car, brought suit against her insurance company to recover under her uninsured motorist coverage, and where her policy expressly forbade her to make a claim based on liability of an uninsured operator of her own vehicle, the Supreme Court held would find that, in light of the fact that the driver was an uninsured motorist, it was against public policy of the state, as expressed by the legislature under § 83-11-103, to allow the insurance company to exclude the insured from coverage. State Farm Mut. Auto. Ins. Co. v. Nester, 459 So. 2d 787 (Miss. 1984).

A guest passenger on a motorcycle who is killed as the result of a collision with an uninsured motorist was an "insured" under the second definition set out in § 83-11-103(b), where she was an occupant of an uninsured vehicle and was not a relative living in the same household with the named insured under the policy, and as such she was not covered under the policy, in that the motorcycle was not a "temporary substitute automobile" as authorized under policy provisions. Aetna Cas. & Sur. Co. v. Barker, 451 So. 2d 731 (Miss. 1984).

A pickup truck owned by an insured was an uninsured vehicle within the meaning of this statute where the truck was driven by an employee who was excluded from coverage under the insured's policy by a cross-employee exclusion clause and who had no other liability policy that would cover his negligent operation of the vehicle; a policy clause purporting to exclude the truck from uninsured vehicle status was ineffective as being clearly in conflict with the Uninsured Motorist Vehicle Act. Preferred Risk Mut. Ins. Co. v. Poole, 411 F. Supp. 429 (N.D. Miss. 1976), aff'd, 539 F.2d 574 (5th Cir. 1976).

Where an automobile liability insurance policy contained a clause excluding bodily injuries to an insured while occupying or through being struck by a land motor vehicle owned by a named insured or any resident of the same household, if such vehicle was not an owned motor vehicle, and insured's son was clearly within the terms of the exclusionary provision of the policy since he was riding a motorcycle which he owned when he was struck by an uninsured motorist, and his motorcycle was not an "owned motor vehicle" as set out in the declaration of the motor vehicle insured, nevertheless the exclusionary clause of the policy violated the public policy of Mississippi by conflicting with the Mississippi statute requiring all automobile liability insurance policies to contain an uninsured motorist provision. Lowery v. State Farm Mut. Auto. Ins. Co., 285 So. 2d 767 (Miss. 1973).

A motorcycle insured against bodily injury liability by a policy which excluded from coverage "bodily injury to any person while on or getting on or alighting from the insured vehicle" was an uninsured motor vehicle as to a motorcycle passenger injured when the motorcycle was involved in an intersection collision with an automobile. Harthcock v. State Farm Mut. Auto. Ins. Co., 248 So. 2d 456 (Miss. 1971).

2. Beneficiaries.

Where the insured's daughter had moved away from home to attend college but maintained a room in his home and had expressed the intention to move back to his home the same weekend she was killed in an automobile accident, the legislature's choice of the more inclusive term "resident" among those potentially covered by uninsured motorist benefits allowed the possibility the insured could recover such benefits. McLeod v. Allstate Ins. Co., 789 So. 2d 806 (Miss. 2001).

Benefits payable under uninsured motorist insurance policy due to injuries resulting in death of insured need not be paid to persons designated under wrongful death statute (§ 11-7-13), but may be paid to surviving spouse in accordance with "facility of payment" clause. Overstreet v. Allstate Ins. Co., 474 So. 2d 572 (Miss. 1985).

3. Exclusion of or offset against benefits payable under other provisions or policies.

Grant of summary judgment in favor of the insurer in the operator's action concerning an offset against the insurer's uninsured motorist coverage limits was proper pursuant to the Uninsured Motorist Act (Act), Miss. Code Ann. § 83-11-101 et seq., where the operator received $ 600,000 from another insurer and had therefore already received far more than the minimum $ 10,000 contracted for and required by the Act. Additionally, the offset clause did not provide an offset for sums paid to parties other than the operator. Jeffcoat v. Am. Nat'l Prop. & Cas. Co., 919 So. 2d 982 (Miss. Ct. App. 2005).

Insurance company was no longer liable for any uninsured motorist (UM) benefits where the insureds admitted that they had been paid, through settlements with a bar that served a motorist alcohol, an amount that exceeded their available UM benefits; the insurance company was not liable for the difference between the total available UM benefits and the amount paid by the driver's liability carrier. Wise v. United Servs. Auto. Ass'n, 861 So. 2d 308 (Miss. 2003).

Underinsured motorist carrier for tortfeasor was entitled to offset its $25,000 UM limits applicable to injured passenger by $16,666.67 in liability payments it made to that passenger, but it was not entitled to offset for payments made by other parties. Fidelity & Guar. Underwriters, Inc. v. Earnest, 699 So. 2d 585 (Miss. 1997).

Where an injured guest-passenger's uninsured or underinsured motorist (UM) policy only allowed the insurer to offset amounts actually paid by it, the host driver's UM insurer was entitled to take its contractual liability insurance offset before the injured passenger's UM insurer, and the passenger's insurer was not entitled to pro-ration of the offset provision of the driver's policy. Dixie Ins. Co. v. State Farm Mut. Auto. Ins. Co., 614 So. 2d 918 (Miss. 1992).

A workers' compensation carrier, which was also the uninsured motorist carrier, was not entitled to a credit on behalf of a deceased employee, where the employee's beneficiary had failed to recover anything from the party responsible for the employee's death. Harris v. Magee, 573 So. 2d 646 (Miss. 1990).

A host vehicle, in which a guest passenger was riding when the vehicle left the road and hit a tree, was not an uninsured vehicle for the purposes of § 83-11-103(c)(iii) where the guest passenger had no uninsured coverage of her own and the host vehicle provided liability coverage of $25,000, so that the liability coverage was not less than the guest's uninsured motorist coverage. Although a guest passenger is permitted to stack his or her own uninsured motorist coverage with the uninsured motorist coverage on the host vehicle for the purpose of qualifying the host vehicle as underinsured, the guest passenger was not allowed to stack the host vehicle's policy to qualify the vehicle as underinsured since the guest had no insurance of her own. To allow her to stack the host vehicle's policy for the purposes of determining whether the vehicle was underinsured would be contrary to the legislative purpose in adopting the underinsured motor vehicle concept as part of Mississippi's statutory scheme; the guest passenger could have contracted with her carrier for excess coverage beyond the statutory minimum, thereby rendering the host vehicle underinsured. For the purpose of establishing whether an insured host vehicle is, in fact, underinsured, the court looks no further than the guest passenger's own coverage and the coverage on the host vehicle. Thiac v. State Farm Mut. Auto. Ins. Co., 569 So. 2d 1217 (Miss. 1990).

An injured passenger was not entitled to collect uninsured motorist coverage provided by a policy on his own automobile where he had received benefits under the driver's policy even though he had received only $436.34 from the driver's insurance coverage and it was undisputed that the injuries received by the passenger were substantial enough to support an award of damages in the amount $9,536.66. Washington v. Georgia Am. Ins. Co., 540 So. 2d 22 (Miss. 1989).

In creating underinsured motorist coverage by amendment of § 83-11-103, legislature did not intend to abrogate rights of underinsured motorist carriers to subrogation as provided in § 83-11-107 and, therefore, underinsured motorist carrier may be allowed offset for payments by underinsured tortfeasor's liability carrier. State Farm Mut. Auto. Ins. Co. v. Kuehling, 475 So. 2d 1159 (Miss. 1985).

Although automobile of tortfeasor who carries liability insurance in amount less than amount of coverage available to injured person under that person's uninsured motorist provisions of injured person's policies is "uninsured motor vehicle" by statutory definition (§ 83-11-103), uninsured motorist coverage may be reduced by offset for sums paid by another company on behalf of under-insured driver where uninsured motorist provision so provides. State Farm Mut. Auto. Ins. Co v. Eubanks, 620 F. Supp. 17 (N.D. Miss. 1985), aff'd, 785 F.2d 1346 (5th Cir. 1986).

4. "Actual physical contact."

Under the uninsured policy issued to the decedent, the insurer properly denied the widow benefits as a witness to the auto accident never saw the other car actually come into physical contact with decedent's car. Mitchell v. United Servs. Auto. Ass'n, 831 So. 2d 1144 (Miss. 2002).

Where there was no actual physical contact between the decedent's vehicle and another vehicle driven by an unidentified motorist which forced it off the road, resulting in the accident which killed the decedent, subdivision (v) controlled and there could be no recovery under the decedent's insurance policy. Massachusetts Bay Ins. Co. v. Joyner, 763 So. 2d 877 (Miss. 2000).

An insured's recovery under an uninsured motorist policy was precluded by § 83-11-103(c) where no actual physical contact occurred between the motor vehicle operated by the uninsured motorist and the insured's vehicle, despite the insured's argument that public policy demanded that they be entitled to recover if they proved the negligence of the uninsured motorist plus the requisite causation. Anderson v. State Farm Mut. Auto. Ins. Co., 555 So. 2d 733 (Miss. 1990).

Truck striking object lying in lane of traffic and propelling it into insured's windshield constitutes physical contact within meaning of statute, which includes physical contact of one vehicle with intermediate vehicle or other object which, in same mechanism of accident, strikes insured's vehicle; injury causing impact must have complete, proximate, direct, and timely relationship with first impact between hit-and-run vehicle and intermediate vehicle, in effect meaning impact must be result of unbroken chain of events with clearly definable beginning and ending occurring in continuous sequence. Southern Farm Bureau Cas. Ins. Co. v. Brewer, 507 So. 2d 369 (Miss. 1987).

5. Exhaustion of proceeds available under policy.

A tortfeasor did not become an "uninsured motorist" with respect to an injured party such that the injured party's uninsured motorist coverage would apply, where multiple claimants under the tortfeasor's liability policy, other than the injured party, had totally exhausted the available proceeds, but the limit of liability provided by the tortfeasor's insurer was not less than the limit provided by the injured party's own uninsured motorist coverage. Cossitt v. Federated Guar. Mut. Ins. Co., 541 So. 2d 436 (Miss. 1989).

6. Aggregating or "stacking" of benefits.

Because the employee was a Class II insured under the insurer's policy, Miss. Code Ann. § 83-11-103(b), he did not have the right to stack an employer's uninsured motorist coverage; the law at the time of the employee's injuries was not that a second class insured could stack all coverages under his employer's uninsured motorist fleet coverage. Deaton v. Miss. Farm Bureau Cas. Ins. Co., 994 So. 2d 164 (Miss. 2008).

In light of Miss. Code Ann. § 83-11-103(c)(iii), a court compared the liability limits of $25,000 in a policy purchased by the owner of a vehicle in which a 17-year-old was riding, to all the uninsured motorist (UM) coverage to which she was entitled. The statutory definition made the vehicle uninsured (or more aptly, underinsured) because the $115,000 of available UM coverage far exceeded the $25,000 of liability coverage. Essinger v. Liberty Mut. Fire Ins. Co., 529 F.3d 264 (5th Cir. 2008).

Where plaintiff was injured in an accident while driving a company car, defendant insurers were entitled to summary judgment on plaintiff's claims for underinsured coverage because plaintiff, who was not listed as a named insured on the fleet policy, could not stack the underinsured motorist coverages on all 138 of the vehicles owned by his employer and insured by his employer under that policy in order to determine that the tortfeasor's vehicle was underinsured. Nettles v. Travelers Prop. Cas. Ins. Co., 375 F. Supp. 2d 489 (S.D. Miss. Feb. 10, 2005), amended by 2005 U.S. Dist. LEXIS 17848 (S.D. Miss. Feb. 14, 2005).

Summary judgment was properly granted to two insurers because an employee's uninsured motorist coverage was insufficient to entitle him to uninsured motorist benefits; under Miss. Code Ann. §§ 83-11-101, 83-11-103, the Class II insured had no personal uninsured motorist benefits to stack with a business policy, and an umbrella policy did not count. Meyers v. Am. States Ins. Co., 914 So. 2d 669 (Miss. 2005).

Under Miss. Code Ann. § 83-11-103(c)(iii) an injured insured may not stack the uninsured motorist coverage of other "fleet" vehicles not involved in an accident to have a third-party tortfeasor's vehicle declared underinsured where the injured party did not insure the fleet in question. Mascarella v. U.S. Fid. & Guar. Co., 833 So. 2d 575 (Miss. 2002).

Insured parties, who were injured while driving one of their employer's three vehicles, were not entitled under Miss. Code Ann. § 83-11-103(b) (1999) to stack the uninsured motorist provisions for the employer's vehicles, because the employer's vehicles were covered by separate policies. Glennon v. State Farm Mut. Auto. Ins. Co., 812 So. 2d 927 (Miss. 2002).

Stacking of the injured person's limits was allowed for the purpose of qualifying the tortfeasor as an underinsured motorist. McDaniel v. Shaklee U.S., Inc., 807 So. 2d 393 (Miss. 2001).

A passenger who is injured in a multiple vehicle collision and is an insured within his or her own uninsured motorist coverage is not entitled to aggregate all the uninsured motorist coverage, which is applicable to all the other injured persons in the collision, for the purpose of determining the underinsured/uninsured status of the negligent driver. Estep v. Allstate Ins. Co., 649 So. 2d 195 (Miss. 1995).

Guest passengers who were in an insured vehicle at the time of a collision with an uninsured motorist were not entitled to stack 5 uninsured motorist coverages sold by the insurer to the owner of the vehicle in which they were passengers where they were Class 2 "insureds" under the policy, and were therefore limited to the uninsured motorist coverage on the vehicle in which they were passengers. Duncan v. Duncan, 634 So. 2d 108 (Miss. 1994).

In a wrongful death action brought by the parents of a passenger who was killed in a motor vehicle accident, the parents were entitled to receive only the uninsured motor vehicle (UM) coverage provided by their own policies and the policy covering the accident vehicle, and were not entitled to the UM coverage provided by 2 other insurance policies issued to the owners of the accident vehicle which covered 2 other automobiles; the parents were entitled to stack the UM coverage provided by the policies in which the passenger met the definition of an "insured" either under the terms of the policy and/or the UM statute, and the passenger was an "insured" only under the policy covering the accident vehicle since she was a guest passenger in that vehicle but was not a guest passenger in either of the other 2 vehicles covered under the other policies issued to the owners. State Farm Mut. Auto. Ins. Co. v. Davis, 613 So. 2d 1179 (Miss. 1992).

An insured was not entitled to stack uninsured motorist coverages where the policies providing the coverages prohibited stacking of coverages in excess of the statutory minimum. Casualty Reciprocal Exch. v. Federal Ins. Co., 608 So. 2d 1258 (Miss. 1992).

Guest passenger who is injured while occupant of an underinsured motor vehicle may not recover from uninsured motorist insurance carried by named insured on another vehicle not involved in accident in question, where insurance on such other vehicle is provided under separate insurance policy; such guest passenger is not "insured" and is not entitled to stack coverage under policy. Thomas v. State Farm Mut. Auto. Ins. Co., 796 F. Supp. 231 (S.D. Miss. 1992).

Guest passenger who was injured while an occupant of underinsured motor vehicle may not recover from uninsured motorist insurance carried by named insured on another vehicle not involved in accident, where insurance on such other vehicle is provided under separate insurance policy, as to which injured person is not an insured. Thomas v. State Farm Mut. Auto. Ins. Co., 796 F. Supp. 231 (S.D. Miss. 1992).

A trial court properly allowed a second class permissive user to stack insured motorist benefits under his employer's commercial fleet policy. Mississippi's statutory scheme does not distinguish a "commercial fleet policy" from any other type of automobile insurance policy, nor is it defined therein, and therefore there is no statutory basis for distinguishing a commercial fleet policy. Harris v. Magee, 573 So. 2d 646 (Miss. 1990).

A Class II insured who was using his employer's insured vehicle at the time of the accident was entitled to stack uninsured motorist benefits under his employer's commercial fleet policy. There is no basis for distinguishing a "commercial fleet policy" from any other type of auto insurance policy. Uninsured motorist coverage is designed to provide innocent injured motorists a means to recover all sums to which they are entitled from an uninsured motorist. The statute is to be liberally construed so as to achieve compensation. Uninsured motorist coverage is available to an injured insured until all sums which he or she is entitled to recover from the uninsured motorist have been recovered. Section 83-11-103 specifically refers to use of a "motor vehicle," which indicates that stacking is necessarily limited to those "motor vehicles" listed in the schedule of covered vehicles. Harris v. Magee, 573 So. 2d 646 (Miss. 1990).

Taxicab driver injured in course of employment qualified as second class insured under automobile liability policy covering cab which he was driving; as second class insured taxi driver could stack uninsured motorist benefits. Curry v. Travelers Indem. Co., 728 F. Supp. 1299 (S.D. Miss. 1989).

Although insurer's maximum liability is aggregate of all uninsured motorist policies under which injured person is covered, "per person" limitations in policies refer to injured person only, not to persons who may make claim under policy. State Farm Mut. Auto. Ins. Co. v. Eubanks, 620 F. Supp. 17 (N.D. Miss. 1985), aff'd, 785 F.2d 1346 (5th Cir. 1986).

Uninsured motorist coverage may be stacked. Allstate Ins. Co. v. Randall, 753 F.2d 441 (5th Cir. 1985).

7. Applicability to farm tractors.

Farm tractor is not vehicle designed for use mainly on public roads and is instead vehicle designed mainly for use off public roads. Wilcher v. Michigan Mut. Ins. Co., 691 F. Supp. 1019 (S.D. Miss. 1988).

8. Uninsured motorist.

Until an insurer had knowledge that another insurance company had denied coverage, the insurer had no reason to believe that there was an uninsured motorist claim, for purposes of Miss. Code Ann. § 83-11-103(c)(ii); the insurer had a legitimate reason not to pursue the uninsured motorist claim sooner and was properly granted summary judgment. Kendrick v. Miss. Farm Bureau Ins., 996 So. 2d 132 (Miss. Ct. App. 2008).

9. Miscellaneous.

Even though Miss. Code Ann. § 83-11-103 provided that an unemancipated minor was a household resident of both the custodial and noncustodial parent for purposes of uninsured motorist insurance, there was no such limit for parties to contract for liability insurance. Thus, a minor primarily living with his father was not an insured under his stepfather's liability policy. Plunkett v. State Farm Mut. Auto. Ins. Co., 625 F. Supp. 2d 321 (N.D. Miss. 2009), reversed by 347 Fed. Appx. 994, 2009 U.S. App. LEXIS 22809 (5th Cir. Miss. 2009).

RESEARCH REFERENCES

ALR. Who is "member" or "resident" of same "family" or "household," within no-fault or uninsured motorist provisions of motor vehicle insurance policy. 96 A.L.R.3d 804.

Unborn child as insured or injured person within meaning of insurance policy. 15 A.L.R.4th 548.

Operation or use of vehicle outside scope of permission as rending it uninsured within meaning of uninsured motorist coverage. 17 A.L.R.4th 1322.

Validity of exclusion in automobile insurance policy precluding recovery of no-fault benefits for injuries arising out of the ownership, maintenance, or use of an uninsured vehicle owned by an insured. 18 A.L.R.4th 632.

Uninsured motorist coverage: validity of exclusion of injuries sustained by insured while occupying "owned" vehicle not insured by policy. 30 A.L.R.4th 172.

Right of liability insurer or uninsured motorist insurer to invoke defense based on insured's tort immunity arising out of marital or other close family relationship to injured party. 36 A.L.R.4th 747.

Uninsured motorist insurance: injuries to motorcyclist as within affirmative or exclusionary terms of automobile insurance policy. 46 A.L.R.4th 771.

Validity, under insurance statutes, of coverage exclusion for injury to or death of insured's family or household members. 52 A.L.R.4th 18.

Right of insured, precluded from recovering against owner or operator of uninsured motor vehicle because of governmental immunity, to recover uninsured motorist benefits. 55 A.L.R.4th 806.

What constitutes "motor vehicle" for purposes of no-fault insurance. 73 A.L.R.4th 1053.

Validity, construction, and application of exclusion of government vehicles from uninsured — motorist provision. 58 A.L.R.5th 511.

Am Jur. 7 Am. Jur. 2d, Automobile Insurance § 136.

Law Reviews. 1979 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 813, December 1979.

Phillips, A Guide to Uninsured Motorist Insurance Law in Mississippi. 52 Miss. L. J. 255, June 1982.

1984 Mississippi Supreme Court Review: Insurance. 55 Miss. L. J. 128, March, 1985.

1985 Mississippi Supreme Court Review-Miscellaneous. 55 Miss. L. J. 827, December 1985.

1987 Mississippi Supreme Court Review, Insurance. 57 Miss. L. J. 550, August, 1987.

1989 Mississippi Supreme Court Review: Insurance. 59 Miss. L. J. 906, Winter, 1989.

Recent Decision: Automobile Insurance—Mississippi Uninsured Motorist Statute—Actual Physical Contact Required Where Claim Involves Unidentified Motorist, 72 Miss. L.J. 1121, Spring, 2003.

§ 83-11-105. Action against owner or operator of uninsured vehicle.

In the event the owner or operator of the uninsured vehicle causing injury or death is known and action is brought against said owner or operator by the named insured as defined by said policy, then a copy of the process served upon the owner or operator shall also be served by the circuit clerk mailing, registered mail, a copy of the process to the insurance company issuing the policy providing the uninsured motorist coverage as prescribed by law.

If the owner or operator of any motor vehicle which causes bodily injury to the insured be unknown, the insured or someone on his behalf, or in the event of a death claim, someone on behalf of the party having such claim in order for the insured to recover under the endorsement, shall report the accident as required by Section 63-15-9, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 8285-53; Laws, 1966, ch. 524, § 3, eff from and after passage (approved May 18, 1966).

Cross References — Application of this section to the exemption from liability of volunteers and sports officials, see § 95-9-5.

JUDICIAL DECISIONS

1. In general.

Once someone who possesses uninsured motorist coverage knows, or reasonably should know, that the damages claimed to have been suffered exceed the limits of insurance available to the alleged tortfeasor, the cause of action against the uninsured motorist carrier has accrued, and it is at this point in time that a potential plaintiff has a legally enforceable claim against the uninsured motorist carrier. Jackson v. State Farm Mut. Auto.

Ins. Co., 852 So. 2d 641 (Miss. Ct. App. 2003).

Though the insured and the insured's wife failed to comply with the notice provisions under their policy, by not giving notice of a claim for underinsured motorist coverage for almost five years, due to a late finding that the limits on the tortfeasor's policy would be insufficient, that omission was not outcome determinative; despite the late notice, the question of prejudice remained a fact issue, and summary judgment for the insurer was improper. Jackson v. State Farm Mut. Auto. Ins. Co., 852 So. 2d 641 (Miss. Ct. App. 2003).

In a dispute over uninsured motorist coverage, a guest passenger in an automobile was entitled to aggregate the owner's coverage on the owner's other vehicles for the purpose of qualifying the tortfeasor as an uninsured motorist. Wickline v. United States Fid. & Guar. Co., 530 So. 2d 708 (Miss. 1988).

The judgment recovered in a case brought by the driver of the insured vehicle against the driver of the other vehicle, to which the insurer was not a party, was not res judicata against the insurer and in no way bound it in an action brought by the driver of the insured vehicle to collect under the uninsured motorist clause. State Farm Fire & Cas. Co. v. Wightwick, 320 So. 2d 373 (Miss. 1975).

Code 1942 § 8285-53 obviously means process in suits begun in Mississippi courts, and it is not a requirement to be performed by clerks of foreign courts. Rampy v. State Farm Mut. Auto. Ins. Co., 278 So. 2d 428 (Miss. 1973).

Code 1942 § 8285-53 does not require persons seeking to recover under the uninsured motorist provisions of an automobile liability policy to have given the insurer notice of a previous tort action against the uninsured motorist, unless the insured is a "named insured" in the liability policy, and then only when substantial prejudice to the rights of the insurer would result but for notice to the insurer from a party seeking to recover under the uninsured motorist indorsement on the judgment obtained in the tort action. Rampy v. State Farm Mut. Auto. Ins. Co., 278 So. 2d 428 (Miss. 1973).

The burden of proof is upon the insurer to show prejudice because of the failure of the named insured to have process issued. Rampy v. State Farm Mut. Auto. Ins. Co., 278 So. 2d 428 (Miss. 1973).

In light of the remedial purpose underlying the Uninsured Motor Vehicles Law, an insurer must demonstrate to the satisfaction of the court that the outcome of the insured's action against an uninsured tortfeasor would have been radically altered had the "named insured" complied with the notice provisions of Code 1942 § 8285-53. Rampy v. State Farm Mut. Auto. Ins. Co., 278 So. 2d 428 (Miss. 1973).

Code 1942 § 8285-53 is directory and not mandatory. Rampy v. State Farm Mut. Auto. Ins. Co., 278 So. 2d 428 (Miss. 1973).

The failure to give a copy of the process to the insurance company of the original suit against an uninsured motorist does not work a forfeiture of a right to sue the insurance company under the uninsured motorist clause in the contract, unless the judgment obtained is used as the basis of a suit or garnishment against the insurance company sought to be charged. Rampy v. State Farm Mut. Auto. Ins. Co., 278 So. 2d 428 (Miss. 1973).

RESEARCH REFERENCES

ALR. Insured's right to bring direct action against insurer for uninsured motorist benefits. 73 A.L.R.3d 632.

Conflict of laws as to right of insured to maintain under uninsured motorist clause a direct action against a automobile liability insurer. 83 A.L.R.3d 308.

Validity of substituted service of process upon liability insurer of unavailable tortfeasor. 17 A.L.R.4th 918.

Validity of exclusion in automobile insurance policy precluding recovery of nofault benefits for injuries arising out of the ownership, maintenance, or use of an uninsured vehicle owned by an insured. 18 A.L.R.4th 632.

Validity, construction, and effect of "consent to sue" clauses in uninsured motorist endorsement of automobile insurance policy. 24 A.L.R.4th 1024.

Uninsured motorist insurance: injuries to motorcyclist as within affirmative or exclusionary terms of automobile insurance policy. 46 A.L.R.4th 771.

Punitive damages as within coverage of uninsured or underinsured motorist insurance. 54 A.L.R.4th 1186.

Right of insured, precluded from recovering against owner or operator of uninsured motor vehicle because of governmental immunity, to recover uninsured motorist benefits. 55 A.L.R.4th 806.

Am Jur. 7 Am. Jur. 2d, Automobile Insurance § 137.

Law Reviews. Phillips, A Guide to Uninsured Motorist Insurance Law in Mississippi. 52 Miss. L. J. 255, June 1982.

§ 83-11-107. Subrogation.

An insurer paying a claim under the endorsement or provisions required by Section 83-11-101 or Section 83-11-102 shall be subrogated to the rights of the insured to whom such claim was paid against the person causing such injury, death, or damage to the extent that payment was made, including the proceeds recoverable from the assets of the insolvent insurer. The bringing of an action against the unknown owner or operator, or the conclusion of such an action, shall not constitute a bar to the insured if the identity of the owner or operator who caused the injury or damages complained of becomes known, provided that in any action brought against such owner or operator, the insurance company that has previously made payment as a result of the policyholder's claim against such owner or operator shall be mailed a copy of the summons issued for the defendant or defendants, and that any recovery against such owner or operator shall be paid to the insurance company to the extent that such insurance company paid the named insured in the action brought against such owner or operator, except that such insurance company shall pay its proportionate part of any reasonable costs and expense incurred in connection therewith, including reasonable attorney's fees.

SOURCES: Codes, 1942, § 8285-54; Laws, 1966, ch. 524, § 4; Laws, 2002, ch. 390, § 2, eff from and after July 1, 2002.

Cross References — Application of this section to the exemption from liability of volunteers and sports officials, see § 95-9-5.

JUDICIAL DECISIONS

1. In general.
2. Illustrative cases.

1. In general.

Insurer's right to subrogation under Miss. Code Ann. § 83-11-107 does not transform into a right to "equitable indemnification" merely because the limitations period has run on its subrogation right, even where the limitations period expires owing to no fault of the insurer. Miss. Farm Bureau Cas. Ins. Co. v. Orme, 422 F. Supp. 2d 685 (S.D. Miss. 2006).

Once someone who possesses uninsured motorist coverage knows, or reasonably should know, that the damages claimed to have been suffered exceed the limits of insurance available to the alleged tortfeasor, the cause of action against the uninsured motorist carrier has accrued, and it is at this point in time that a potential plaintiff has a legally enforceable claim against the uninsured motorist carrier. Jackson v. State Farm Mut. Auto. Ins. Co., 852 So. 2d 641 (Miss. Ct. App. 2003).

Uninsured motorist carrier's third party subrogation claim against city accrued, and one-year statute of limitations began to run, on date of accident. Coleman v. American Mfrs. Mut. Ins. Co., 930 F. Supp. 255 (N.D. Miss. 1996).

An insured's release and discharge of an underinsured tortfeasor who caused her personal injuries operated to preclude a subsequent subrogation suit by her uninsured motorist carrier; the carrier stepped into the shoes of its subrogor/insured and acquired no rights greater than she had and, because she had released the original tortfeasor, the carrier was barred as well. St. Paul Property & Liab. Ins. Co. v. Nance, 577 So. 2d 1238 (Miss. 1991).

A tortfeasor whose automobile struck a vehicle driven by an insured was an "uninsured motorist" for subrogation purposes under the Uninsured Motorist Act pursuant to § 83-11-103(c)(iii), even though the tortfeasor was "underinsured" in fact. St. Paul Property & Liab. Ins. Co. v. Nance, 577 So. 2d 1238 (Miss. 1991).

Jury's award of $500 in actual damages to insured motorcyclist who was injured in rear-end collision with uninsured automobile operated by defendant meant that its contractual damages award to the insured of $50,000 against his insurer was excessive by $49,500, in view of policy provision limiting insured's recovery against insurer to amount legally recoverable from owner or operator of uninsured vehicle. Moreover, an award against an insurer of $50,000 which carried with it subrogation rights of $500 was anomalous. Thus, contractual damage award against the insurer was reduced to $500. Employers Mut. Cas. Co. v. Tompkins, 490 So. 2d 897 (Miss. 1986).

Accident victim's failure to sue tortfeasor within 6 months statute of limitations does not require dismissal of suit against insurer. Bailey v. State Farm Fire & Cas. Ins. Co., 621 F. Supp. 1016 (S.D. Miss. 1985).

Phrase "legally entitled to recover" has not been interpreted to require insured to sue or obtain judgment against uninsured tortfeasor before suing insurer. Bailey v. State Farm Fire & Cas. Ins. Co., 621 F. Supp. 1016 (S.D. Miss. 1985).

In creating underinsured motorist coverage by amendment of § 83-11-103, legislature did not intend to abrogate rights of underinsured motorist carriers to subrogation as provided in § 83-11-107 and, therefore, underinsured motorist carrier may be allowed offset for payments by underinsured tortfeasor's liability carrier. State Farm Mut. Auto. Ins. Co. v. Kuehling, 475 So. 2d 1159 (Miss. 1985).

Plaintiff insured was not entitled to judgment against her insurer for personal injuries she sustained in an automobile accident with an uninsured motorist where, contrary to both the policy provision precluding settlement with an uninsured motorist without the consent of the insurer and the insurer's statutory right of subrogation, defendant insurer not only did not consent to, but had no part in or knowledge of a settlement and release between the uninsured motorist and plaintiff, and where the fact of the accident was not reported to the insurer for three weeks. Joyner v. Delta Brick & Tile Co., 367 So. 2d 914 (Miss. 1979).

An insured who was injured in an automobile accident with an uninsured motorist was entitled to full recovery of a judgment obtained against the uninsured motorist before the insurer could assert its subrogation lien. Dunnam v. State Farm Mut. Auto. Ins. Co., 366 So. 2d 668 (Miss. 1979).

2. Illustrative cases.

Insurer of a passenger and an insured could not proceed on a claim for "equitable indemnification" against the insured to recover a sum paid to the passenger under an underinsured/uninsured motorist policy after he was struck by the insured's car; the insurer could proceed only on a claim of subrogation under Miss. Code Ann. § 83-11-107, but because the claim was barred by the statute of limitations, the insurer had no viable claim against the insured. Miss. Farm Bureau Cas. Ins. Co. v. Orme, 422 F. Supp. 2d 685 (S.D. Miss. 2006).

RESEARCH REFERENCES

ALR. Insured's right to bring direct action against insurer for uninsured motorist benefits. 73 A.L.R.3d 632.

Right of insured, precluded from recovering against owner or operator of uninsured motor vehicle because of governmental immunity, to recover uninsured motorist benefits. 55 A.L.R.4th 806.

Am Jur. 7 Am. Jur. 2d, Automobile Insurance §§ 202 et seq.

CJS. 46 C.J.S., Insurance §§ 1710, 1713 et seq.

Law Reviews. 1979 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 813, December 1979.

Phillips, A Guide to Uninsured Motorist Insurance Law in Mississippi. 52 Miss. L. J. 255, June 1982.

§ 83-11-109. Arbitration provisions prohibited.

No such endorsement or provisions shall contain a provision requiring arbitration of any claim arising under any such endorsement or provisions. The insured shall not be restricted or prevented in any manner from employing legal counsel or instituting or prosecuting to judgment legal proceedings, but the insured may be required to establish legal liability of the uninsured owner or operator.

SOURCES: Codes, 1942, § 8285-55; Laws, 1966, ch. 524, § 5; Laws, 1968, ch. 376, § 1, eff from and after passage (approved March 15, 1968).

Cross References — Exclusion of legal services provided under automobile liability insurance policy from provisions relating to legal expense insurance, see § 83-49-5.

Application of this section to the exemption from liability of volunteers and sports officials, see § 95-9-5.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 83-11-109 reverse preempts the Federal Arbitration Act, 9 U.S.C.S. § 1 et seq., under the McCarran-Ferguson Act, 15 U.S.C.S. § 1011 et seq., because Miss. Code Ann. § 83-11-109 regulates the business of insurance; it transfers the risk, it is limited to the insurance industry, and it is an integral part of the insured-insured relationship. Therefore, an insurer's motion to compel arbitration was denied. Am. Bankers Ins. Co. v. Inman, 436 F.3d 490 (5th Cir. 2006).

Another purpose forbidding compulsory arbitration was the prevention of the unjust result which might be occasioned by two separate determinations as to the legal liability of the uninsured motorist and the amount of damages for which he is liable. Logan v. Aetna Cas. & Sur. Co., 309 F. Supp. 402 (S.D. Miss. 1970).

The primary purpose of the prohibition of compulsory arbitration agreements by this section [Code 1942, § 8285-55] was to require that the legal liability of an uninsured motorist, absent an agreement by the parties, be determined in a court of law. Logan v. Aetna Cas. & Sur. Co., 309 F. Supp. 402 (S.D. Miss. 1970).

RESEARCH REFERENCES

ALR. Right of insured, precluded from recovering against owner or operator of uninsured motor vehicle because of governmental immunity, to recover uninsured motorist benefits. 55 A.L.R.4th 806.

Uninsured and underinsured motorist coverage: enforceability of policy provision limiting appeals from arbitration. 23 A.L.R.5th 801.

Am Jur. 7 Am. Jur. 2d, Automobile Insurance § 138.

Law Reviews. Phillips, A Guide to Uninsured Motorist Insurance Law in Mississippi. 52 Miss. L. J. 255, June 1982.

§ 83-11-111. Excess insurance coverage.

Any policy which grants the coverage required for motor vehicle liability insurance may also grant any lawful coverage in excess of, or in addition to, the coverage specified for a motor vehicle liability policy, and the excess or additional coverage shall not be subject to the provisions of this article, except as otherwise provided in this article. With respect to a policy which grants this excess or additional coverage, the term "motor vehicle liability policy" as used herein shall apply only to that part of the coverage which is required by this article.

Any binder issued pending the issuance of a motor vehicle liability policy shall be considered as fulfilling the requirements for such policy.

SOURCES: Codes, 1942, § 8285-56; Laws, 1966, ch. 524, § 6; Laws, 1979, ch. 429, § 3, eff from and after January 1, 1980.

Cross References — Application of this section to the exemption from liability of volunteers and sports officials, see § 95-9-5.

JUDICIAL DECISIONS

1. In general.

Summary judgment was properly granted to two insurers because an employee's uninsured motorist coverage was insufficient to entitle him to uninsured motorist benefits; under Miss. Code Ann. §§ 83-11-101, 83-11-103, the Class II insured had no personal uninsured motorist benefits to stack with a business policy, and an umbrella policy did not count. Meyers v. Am. States Ins. Co., 914 So. 2d 669 (Miss. 2005).

Under Mississippi law, parties are free to contract for supplemental benefits as they see fit so long as uninsured motorist benefits do not exceed liability benefits and insurance policy provision for reduction of supplemental uninsured motorist benefits because of workers' compensation received by beneficiary is enforceable with regard to those benefits, although benefits may not be reduced below minimum required by statute. Section 83-11-111 provides that any coverage in excess of coverage required by that article "shall not be subject to provisions of this article" except as provided. Porter v. Shelter Gen. Ins. Co., 678 F. Supp. 151 (S.D. Miss. 1988).

Provision in automobile liability insurance policy providing that amounts payable under uninsured motorist insurance shall be reduced by amount paid and present value of all amounts payable under any workmen's compensation law, disability benefits law or similar law cannot reduce uninsured motorist benefits below statutory minimum, however, such provision can be applied to supplemental benefits, as Miss. Code Annotated § 83-11-111 provides that any coverage in excess of coverage required by law shall not be subject to provisions of law, such that supplemental benefits may be reduced by amounts received under workmen's compensation law. Porter v. Shelter Gen. Ins. Co., 678 F. Supp. 151 (S.D. Miss. 1988).

Automobile insurance policy provision, which excluded from uninsured motorist coverage any vehicle not insured for such coverage under the policy, excluded all uninsured motorist coverage for any vehicle not listed in the policy and not just that uninsured coverage in excess of that required by statute, and the provision was invalid. Employers Mut. Cas. Co. v. Tompkins, 490 So. 2d 897 (Miss. 1986).

Recovery under uninsured or underinsured motorist liability insurance cannot be limited by an insurer for benefits for which a premium is paid by an insured, notwithstanding clear and unambiguous language of attempted limitation by the insurer. Thus, on a claim involving one of three insured vehicles, aggregation of coverages is permitted on two distinct theories: (1) uninsured motorist coverage contained in one policy of insurance insuring the three vehicles, and for which a separate premium was paid, can be aggregated; (2) while the language of the "limits of liability" clause of the insurance policy is clear and unambiguous as to what is intended, when read together with the declaration sheet it becomes unlear and ambiguous, inasmuch as the declaration sheet seeks to provide separate coverages for uninsured motorists on three vehicular units and charges separate premiums therefor while the "limits of liability" clause seeks to repudiate such coverage; on either theory the limitation fails and is void. Government Employees Ins. Co. v. Brown, 446 So. 2d 1002 (Miss. 1984).

The fact that a liability policy issued to an automobile repair service and providing indemnity protection to the repair service with limits of $100,000-$300,000 limited coverage provided to customers, during use of automobiles loaned by the service to the limits fixed by the Motor Vehicle Safety Responsibility Law, did not render the policy illegal or contrary to public policy. Travelers Indem. Co. v. Chappell, 246 So. 2d 498 (Miss. 1971).

RESEARCH REFERENCES

ALR. Validity of exclusion in automobile insurance policy precluding recovery of no-fault benefits for injuries arising out of the ownership, maintenance, or use of an uninsured vehicle owned by an insured. 18 A.L.R.4th 632.

Combining or "stacking" uninsured motorist coverages provided in policies issued by different insurers to same insured. 21 A.L.R.4th 211.

Omnibus clause as extending automobile liability coverage to third person using car with consent of permittee of named insurer. 21 A.L.R.4th 1146.

Primary insurer's insolvency as affecting excess insurer's liability. 85 A.L.R.4th 729.

Requirement that multicoverage umbrella insurance policy offer uninsured-or underinsured-motorist coverage equal to liability limits under umbrella provisions. 52 A.L.R.5th 451.

Am Jur. 28 Am. Jur. Proof of Facts 3d 507, Proof of Excess Insurer's Cause of Action against Primary Insurer.

Law Reviews. Phillips, A Guide to Uninsured Motorist Insurance Law in Mississippi. 52 Miss. L. J. 255, June 1982.

Comment: Uninsured motorist insurance, the commercial fleet policy, and Harris v. Magee : a modest proposal for change. 61 Miss. L. J. 171 (Spring 1991).

Article 5.

Automobile Club Services.

Sec.
83-11-201. Citation.
83-11-203. Definitions.
83-11-205. Additional insurance services.
83-11-207. Security deposit or bond.
83-11-209. Purposes and conditions of security.
83-11-211. Members' rights against surety bond.
83-11-213. Rights against cash deposit.

83-11-215. Approval of name.
83-11-217. Certificate of authority.
83-11-219. Application for certificate.
83-11-221. Renewal of certificate.
83-11-223. Expiration and reinstatement of certificate.
83-11-225. Grounds for revocation of certificate.
83-11-227. Solicitation for club not having certificate of authority.
83-11-229. Service contracts.
83-11-231. Mandatory information and provisions of contract.
83-11-233. Misrepresentation.
83-11-235. Effect of non-complying contract.
83-11-237. Notice of appointment of sales agent.
83-11-239. Revocation of agent's registration.
83-11-241. Hearing on revocation.
83-11-243. Financial statements.
83-11-245. Violations.
83-11-247. Monies to be deposited.

§ 83-11-201. Citation.

This article shall be known and cited as the "Automobile Club Services Law."

SOURCES: Codes, 1942, § 5670.9-01; Laws, 1971, ch. 467, § 1, eff from and after September 1, 1971.

RESEARCH REFERENCES

Practice References. Automobile Insurance Step-Down Provisions (LexisNexis).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

Am Jur. 7 Am. Jur. 2d, Automobiles and Highway Traffic § 49.

§ 83-11-203. Definitions.

As used in this article:

(a) "Automobile club" shall mean any person who, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to travel and the operation, use, and maintenance of an automobile in the supply of features or services which may include:

(1) such services as community traffic safety services, travel and touring service, theft or reward service, map service, towing service, emergency road service, and legal fee reimbursement service in the defense of traffic offenses, none of which enumerated features or services, if provided by the automobile club itself, shall be subject to the insurance laws of this state;

(2) the purchase of accidental injury and death benefits insurance coverage and the purchase of bail bond coverage, as provided by applicable statutes, by an insurance company authorized to do business in Mississippi; and

(3) such other features or services not deemed by the commissioner to constitute the business of insurance.

Provided, however, the definition of an automobile club shall not include persons, associations, or corporations whose services are provided predominantly on a reimbursable basis. Such operations shall constitute insurance and be subject to the insurance laws of Mississippi.

(b) "Commissioner" means the commissioner of insurance of the State of Mississippi.

(c) "Club agent" is a person, other than the automobile club itself, who acts or aids in any manner in the solicitation, delivery, or negotiation of any service contract, or of the renewal or continuance thereof. This, however, shall not include any person performing only work of a clerical nature in the office of the automobile club.

(d) "Service contract" means an agreement whereby an automobile club, for a consideration, promises to render, furnish, procure, or reimburse club members specified services.

(e) "Person" means any individual person, firm, company, corporation, partnership, or association.

(f) "Insurance service" means the selling or making available individual or group insurance policies or certificates other than service contracts as a result of membership in or affiliation with an automobile club; such policies, if sold or made available, shall be issued only by an insurance company duly authorized to do business in Mississippi.

SOURCES: Codes, 1942, § 5670.9-02; Laws, 1971, ch. 467, § 2, eff from and after September 1, 1971.

Cross References — Guaranteed arrest bond certificate in lieu of cash bail for certain traffic violations, see § 63-9-27.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. 2d, Automobiles and Highway Traffic § 49.

§ 83-11-205. Additional insurance services.

The commissioner may, upon the application of an automobile club, allow such automobile club to provide specific insurance services not enumerated in section 83-11-203(a)(2).

SOURCES: Codes, 1942, § 5670.9-03; Laws, 1971, ch. 467, § 3, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-11-207. Security deposit or bond.

No automobile club shall render or agree to render service without first depositing and thereafter continuously maintaining security in one (1) of the following forms with the commissioner:

(a) The sum of Fifteen Thousand Dollars ($15,000.00) in cash or Fifteen Thousand Dollars ($15,000.00) surety bond by a surety company authorized to do business in Mississippi, or Fifteen Thousand Dollars ($15,000.00) in securities of a type approved by the commissioner and qualified for legal investment by an insurance company authorized to do business in Mississippi.

(b) If any security deposited with the commissioner shall become impaired and shall not be restored within thirty (30) days after written demand by the commissioner, the commissioner shall revoke the certificate of authority of the automobile club or, in the alternative, the commissioner may require such additional security deposit as in his discretion he shall deem necessary to restore adequate securities for the automobile club deposit.

SOURCES: Codes, 1942, § 5670.9-04; Laws, 1971, ch. 467, § 4, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 7A Am. Jur. 2d, Automobile and Highway Traffic § 50.

§ 83-11-209. Purposes and conditions of security.

The security required to be filed by this article shall be for the protection, use, and benefit of any club member, shall be subject to the following conditions, and, if a surety bond, shall be so expressly conditioned that:

(a) The club will faithfully furnish and render to club members any and all of the automobile club services sold or offered for sale by it, and

(b) The club will pay any fines, fees, or penalties imposed upon it pursuant to the provisions of this article.

SOURCES: Codes, 1942, § 5670.9-05; Laws, 1971, ch. 467, § 5, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 72.

CJS. 44 C.J.S., Insurance §§ 121-123.

§ 83-11-211. Members' rights against surety bond.

If a surety bond is filed, any applicant defrauded or injured by any wrongful act, misrepresentation, or failure on the part of the automobile club with respect to the selling or rendering of any of its services may bring suit on such bond in his own name; but the aggregate liability of the surety for all such suits shall, in no event, exceed the sum of such bond.

SOURCES: Codes, 1942, § 5670.9-06; Laws, 1971, ch. 467, § 6, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 72.

CJS. 44 C.J.S., Insurance §§ 121-123.

§ 83-11-213. Rights against cash deposit.

A deposit of cash or securities, in lieu of a surety bond, shall be subject to the conditions applying to the bond and to execution on judgments against the club.

SOURCES: Codes, 1942, § 5670.9-07; Laws, 1971, ch. 467, § 7, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 72.

CJS. 44 C.J.S., Insurance §§ 121-123.

§ 83-11-215. Approval of name.

The name of the automobile club shall be submitted to the commissioner for approval pursuant to Section 83-11-219 before the commencement of business under the provisions of this article. The commissioner shall reject any name so submitted when the proposed name is deceptively similar to that of any other automobile club or other corporation licensed or qualified to do business in this state.

SOURCES: Codes, 1942, § 5670.9-08; Laws, 1971, ch. 467, § 8, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-11-217. Certificate of authority.

No person shall render or agree to render automobile club service in this state without first obtaining from the commissioner a certificate of authority so to act.

SOURCES: Codes, 1942, § 5670.9-09; Laws, 1971, ch. 467, § 9, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. 2d, Automobiles and Highway Traffic § 49.

CJS. 44 C.J.S., Insurance §§ 105-115.

§ 83-11-219. Application for certificate.

An application for an original certificate of authority as an automobile club shall be made to the commissioner in such form and detail as the commissioner shall prescribe and shall have annexed thereto:

(a) A copy of its charter as amended, certified, if a foreign company, by the proper public officer of the state or country of domicile;

(b) A copy of its bylaws, if any, certified by its proper officer;

(c) A statement of its financial condition, management, and affairs;

(d) A copy of each form of service agreement, contract, and service brochure it proposes to use in this state;

(e) If a foreign company, a certificate from the proper public official from its state or country of domicile showing that it is duly organized and is authorized to transact the type of automobile club service which it proposes to transact in Mississippi;

(f) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with the provisions of the laws of the State of Mississippi;

(g) A certificate issued by the secretary of state that it has qualified to do business as a corporation in this state, and that it has appointed the commissioner as its attorney to receive service of legal process.

The application shall be accompanied by a fee of One Hundred Dollars ($100.00), payable to the State of Mississippi.

SOURCES: Codes, 1942, § 5670.9-10; Laws, 1971, ch. 467, § 10, eff from and after September 1, 1971.

Cross References — Audit of annual financial statements of insurers, see §§ 83-5-101 et seq.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. 2d, Automobiles and Highway Traffic § 49.

CJS. 44 C.J.S., Insurance §§ 105-115, 129, 130.

§ 83-11-221. Renewal of certificate.

A certificate of authority duly issued by the commissioner shall be evidence of an automobile club's authority to transact the business of furnishing automobile club service in this state.

A certificate of authority shall continue in force as long as the automobile club is entitled thereto under this article and until suspended or revoked by the commissioner, or terminated at the request of the automobile club; subject, however, to renewal of the certificate by the automobile club each year by:

(a) Payment prior to March 1 of each year, following that in which its original certificate is filed, of a fee of Twenty-five Dollars ($25.00), and

(b) due filing by the automobile club of its annual financial statement for the calendar year preceding, as required under Section 83-11-243.

SOURCES: Codes, 1942, § 5670.9-11; Laws, 1971, § 11, eff from and after September 1, 1971.

Cross References — Audit of annual financial statements of insurers, see §§ 83-5-101 et seq.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 68, 70.

CJS. 44 C.J.S., Insurance §§ 96, 118-120, 131, 132.

§ 83-11-223. Expiration and reinstatement of certificate.

Certificates of authority shall expire as of midnight on March 31 unless renewed. The commissioner shall promptly notify the automobile club of the occurrence of any failure resulting in impending expiration of its certificate of authority.

The commissioner may in his discretion upon the automobile club's request, made within three (3) months after expiration, reinstate and renew a certificate of authority which the automobile club had inadvertently permitted to expire, after the automobile club has fully cured all of its failures which resulted in expiration, and upon payment by the automobile club of a fee for reinstatement of Fifty Dollars ($50.00). Otherwise, the automobile club shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

SOURCES: Codes, 1942, § 5670.9-12; Laws, 1971, ch. 467, § 12, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. 2d, Automobiles and Highway Traffic § 49.

CJS. 44 C.J.S., Insurance § 105-115.

§ 83-11-225. Grounds for revocation of certificate.

The commissioner may revoke, suspend, or refuse to continue the certificate of authority of an automobile club whenever, after a hearing and for cause shown, he determines that any of the following circumstances exist:

(a) The club has violated any provision of this article;

(b) It is found by the commissioner to be in such financial condition that its further transaction of automobile club service in this state would be hazardous to its members and the automobile club service-buying public in this state, or that it is insolvent;

(c) It refuses to remove, discharge, or terminate its relationship with a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude;

(d) It customarily or in the regular course of business compels claimants under its service contracts either to accept less than the amount due them or fewer services, or to bring suit against it to secure full payment of the amount of all services due;

(e) It conducts its business outside this state in such manner as unjustly to discriminate against or prejudice the interests of the people of this state;

(f) It is affiliated with and is under the same general management or interlocking directorate or ownership as another automobile club which transacts business in this state which does not have a certificate of authority therefor;

(g) It exceeds its charter powers of its certificate of authority;

(h) It refuses to be examined, or if its directors, managing officers, employees, or representatives refuse to submit to examination by the commissioner when required by him, or refuses to perform any legal obligation relative to the examination, the time and place of the examination to be specified by the commissioner.

SOURCES: Codes, 1942, § 5670.9-13; Laws, 1971, ch. 467, § 13, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance Form 11.1 (petition or application by insurance company against state commissioner of insurance to enjoin further proceedings to suspend or revoke insurance company's certificate of authority).

CJS. 44 C.J.S., Insurance § 124.

§ 83-11-227. Solicitation for club not having certificate of authority.

No person shall solicit or aid in the solicitation of another person to purchase a service contract or membership issued by a club not having a certificate of authority procured pursuant to this article.

SOURCES: Codes, 1942, § 5670.9-16; Laws, 1971, ch. 467, § 16, eff from and after September 1, 1971.

§ 83-11-229. Service contracts.

Automobile clubs shall be required to execute service contracts with their members. No service contract shall be executed, issued, or delivered in this state until the form thereof has been approved in writing by the commissioner.

A service contract may be in the form of a written agreement between the automobile club and a member, or it may consist of a completed application, a membership card, and a written description of services to be rendered by the automobile club.

SOURCES: Codes, 1942, § 5670.9-14; Laws, 1971, ch. 467, § 14, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

CJS. 44 C.J.S., Insurance § 392.

§ 83-11-231. Mandatory information and provisions of contract.

No service contract shall be executed, issued, or delivered in the state unless it contains the following:

(a) The exact corporate or other name of the club.

(b) The exact location of its home office and of its usual place of business in the state, giving street number and city.

(c) A provision that the contract may be canceled at any time by giving written notice thereof by either the club or the holder, and that the holder will, if the dues or membership fee has been paid thereupon, be entitled to a refund of the unused portion of the consideration paid for such contract, calculated on a pro rata basis over the period of the contract, without any deductions, provided that the automobile club may make a reasonable minimum charge.

(d) A provision plainly specifying: the services promised, that the holder will not be required to pay any sum in addition to the amount specified in the contract for any services thus specified, the territory wherein such services are to be rendered, the date when such service will commence, and a statement in not less than fourteen (14) point modern type at the head of said contract stating, "This is not an insurance contract."

SOURCES: Codes, 1942, § 5670.9-15; Laws, 1971, ch. 467, § 15, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

CJS. 44 C.J.S., Insurance § 392.

§ 83-11-233. Misrepresentation.

No automobile club or officer or agent thereof shall in any manner misrepresent the terms, benefits, or privileges of any service contract or membership issued or to be issued by it.

SOURCES: Codes, 1942, § 5670.9-17; Laws, 1971, ch. 467, § 17, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 74, 78.

§ 83-11-235. Effect of non-complying contract.

Any service contract or membership made, issued, or delivered contrary to any provision of this article shall, nevertheless, be valid and binding on the club.

SOURCES: Codes, 1942, § 5670.9-18; Laws, 1971, ch. 467, § 18, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

CJS. 44 C.J.S., Insurance § 392.

§ 83-11-237. Notice of appointment of sales agent.

(1) An automobile club operating in this state pursuant to a certificate of authority issued hereunder shall, within thirty (30) days of the date of appointment, file with the commissioner a notice of appointment of a club agent by an automobile club to sell memberships in the automobile club to the public. This notification shall be upon such form as the commissioner may prescribe, shall contain the name, address, age, sex, and social security number of such club agent, and also contain proof satisfactory to the commissioner that such applicant is of good reputation and that he has received training from the club or is otherwise qualified in the field of automobile club service contracts and the laws of this state pertaining thereto. Upon termination of any club agent's appointment by an automobile club, such automobile club shall, within thirty (30) days thereafter, notify the commissioner of such termination.

(2) The registration fee for club agents shall be Five Dollars ($5.00) annually, and such registration shall be renewable on April 1 of each year unless sooner revoked or suspended.

SOURCES: Codes, 1942, § 5670.9-19; Laws, 1971, ch. 467, § 19, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 75.

CJS. 44 C.J.S., Insurance § 138.

§ 83-11-239. Revocation of agent's registration.

The commissioner may suspend, revoke, or refuse to renew any club agent's registration for any of the following causes:

(a) If the club agent violated any of the provisions or requirements of this article;

(b) If the club agent has misappropriated, converted to his own use, or has illegally withheld monies required to be held in the fiduciary capacity;

(c) If the club agent has materially misrepresented the terms or effect of any contract or has engaged in any fraudulent transaction;

(d) If in the conduct of his affairs he has shown himself to be incompetent, untrustworthy, or a source of injury and loss to the automobile club service-buying public;

(e) If the club agent has been convicted after registration of a crime involving moral turpitude.

SOURCES: Codes, 1942, § 5670.9-20; Laws, 1971, ch. 467, § 20, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 77.

CJS. 44 C.J.S., Insurance § 138.

§ 83-11-241. Hearing on revocation.

No club agent's registration shall be suspended or revoked by the commissioner without providing an opportunity to be heard and to produce evidence in his own behalf.

SOURCES: Codes, 1942, § 5670.9-21; Laws, 1971, ch. 467, § 21, eff from and after September 1, 1971.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 77.

CJS. 44 C.J.S., Insurance § 138.

§ 83-11-243. Financial statements.

Each authorized automobile club shall annually, before March 1, file with the commissioner a true statement of its financial condition, transactions, and affairs as of December 31 preceding. The statement shall contain such information as may be reasonably required by the commissioner, and shall be verified by the oaths of at least two (2) of the automobile club's principal officers.

The commissioner may suspend or revoke the certificate of authority of any automobile club failing to file its annual statement when due or during any extension of time therefor which the commissioner, for good cause, may grant.

SOURCES: Codes, 1942, § 5670.9-22; Laws, 1971, ch. 467, § 22, eff from and after September 1, 1971.

Cross References — Audit of annual financial statements of insurers, see §§ 83-5-101 et seq.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance Form 11.1 (petition or application by insurance company against state commissioner of insurance to enjoin further proceedings to suspend or revoke insurance company's certificate of authority).

CJS. 44 C.J.S., Insurance § 96.

§ 83-11-245. Violations.

Any person violating any of the provisions of this article shall be guilty of a misdemeanor.

SOURCES: Codes, 1942, § 5670.9-23; Laws, 1971, ch. 467, § 23, eff from and after September 1, 1971.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 83-11-247. Monies to be deposited.

All monies collected by the commissioner under any provisions of this article shall be deposited in the general treasury.

SOURCES: Codes, 1942, § 5670.9-24; Laws, 1971, ch. 467, § 24, eff from and after September 1, 1971.

ARTICLE 7.

TOWING AND STORAGE OF DISABLED VEHICLES.

SEC.
83-11-301. Recovery of towing and storage charges from insurer.

§ 83-11-301. Recovery of towing and storage charges from insurer.

(1) An automobile insurance policy shall not be construed to allow an insurer to assume or accede to the legal title of a motor vehicle without assuming credit obligations of the insured owner of the motor vehicle for reasonable and customary charges for towing and storage services associated with the incident from which the insurance coverage arises.

(2) An insurer which has succeeded to the title of a motor vehicle is not authorized to abandon such vehicle to a towing or storage service without consent of the provider of such service.

(3)(a) A debt incurred by or on behalf of a named insured for towing or storage services may be collected from an insurer which succeeds to the legal title of the motor vehicle covered under the policy for physical damage, property damage or uninsured motorist coverage.

(b) An insurer may be authorized by the provisions of an automobile insurance policy to act for a named insured in any matter regarding the towing and storage of a covered disabled vehicle.

SOURCES: Laws, 1988, ch. 403, eff from and after July 1, 1988.

RESEARCH REFERENCES

Practice References. Automobile Insurance Step-Down Provisions (LexisNexis).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

ARTICLE 9.

REPAIRS TO DAMAGED VEHICLES.

SEC.
83-11-501. Requirement that repairs be made at particular shop prohibited; insurer's payment of lowest fair amount in geographic or trade area.
83-11-503. Advertisement to pay insured's deductibles prohibited.

§ 83-11-501. Requirement that repairs be made at particular shop prohibited; insurer's payment of lowest fair amount in geographic or trade area.

No insurer may require as a condition of payment of a claim that repairs to a damaged vehicle, including glass repairs or replacements, must be made by a particular contractor or motor vehicle repair shop; provided, however, the most an insurer shall be required to pay for the repair of the vehicle or repair or replacement of the glass is the lowest amount that such vehicle or glass could be properly and fairly repaired or replaced by a contractor or repair shop within a reasonable geographical or trade area of the insured.

SOURCES: Laws, 1989, ch. 415, § 1; Laws, 1992, ch. 528, § 1, eff from and after July 1, 1992.

JUDICIAL DECISIONS

1. Priority Repair Option program.

The defendant insurance company was entitled to summary judgment in an action alleging a violation of the statute where the plaintiff presented no evidence suggesting that the defendant or any of its agents had conditioned payment of a claim upon the utilization of the body shops participating in its priority repair option program and, to the contrary, the plaintiff's own witnesses attested to the fact that while the defendant's agents may have recommended certain participating body shops, the defendant did not condition payment upon having those shops make the repairs to the insured's vehicles. Addison v. Allstate Ins. Co., 97 F. Supp. 2d 771 (S.D. Miss. 2000).

A "Priority Repair Option" program, whereby the defendant insurance company pre-approved certain automobile body repair shops to perform repairs for its insureds did not violate this section where the plaintiff presented absolutely no evidence that the insurance company, or any of its agents, through the program, required its insureds to have repairs done at particular body shops. Christmon v. Allstate Ins. Co., 82 F. Supp. 2d 612 (S.D. Miss. 2000).

RESEARCH REFERENCES

Practice References. Automobile Insurance Step-Down Provisions (LexisNexis).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-11-503. Advertisement to pay insured's deductibles prohibited.

No person selling or engaged in the sale of automobile replacement glass shall advertise to pay all or part of an insured's deductible under an insurance policy.

SOURCES: Laws, 1992, ch. 528, § 2, eff from and after July 1, 1992.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Automobile repairman's duty to provide customer with information, estimates, or replaced parts, under automobile repair consumer protection act. 25 A.L.R.4th 506.

ARTICLE 11.

PAYMENT OF CLAIMS.

SEC.
83-11-551. Addition of name of business repairing automobile or lienholder as payee on check.

§ 83-11-551. Addition of name of business repairing automobile or lienholder as payee on check.

(1) In cases in which there is not a total loss, when there are one or more lienholders shown in the policy or confirmed in writing by the insured before the loss, an insurer paying a claim under automobile physical damage coverage or automobile collision coverage, as such terms are defined in Section 83-11-1, shall add as a payee on the check, in addition to the name of the insured, the name of the business or other entity repairing the automobile or the name of the lienholder or lienholders.

(2) In cases of a total loss, when there are one or more lienholders (a) shown in the policy, (b) confirmed in writing by the insured before the loss, or (c) shown on the vehicle title recorded with the Mississippi State Tax Commission, an insurer paying a claim under automobile physical damage coverage or automobile collision coverage, as such terms are defined in Section 83-11-1, shall add as a payee on the check, in addition to the name of the insured, the name of the lienholder or lienholders.

(3) If the insured disputes the existence of any lien, it is the insured's responsibility to have the liens released. When payment is made to a lienholder, the lienholder shall pay any balance owed to the debtor within thirty (30) days after receipt of the check. However, in the case of a total loss, the insurer may issue separate checks to the lienholder and to the insured for the amount of each party's financial interest in the vehicle. This section shall not apply to the repair or replacement of glass in the vehicle.

SOURCES: Laws, 2007, ch. 594, § 1; Laws, 2009, ch. 461, § 1, eff from and after July 1, 2009.

Editor's Note — Section 27-3-4 provides that the term "Mississippi State Tax Commission" shall mean the Department of Revenue.

Laws of 2007, ch. 594, § 2 provides as follows:

"SECTION 2. Section 1 of this act shall be codified within Chapter 11, Title 83 of the Mississippi Code of 1972."

Amendment Notes — The 2009 amendment rewrote the section.

RESEARCH REFERENCES

Practice References. Automobile Insurance Step-Down Provisions (LexisNexis).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

CHAPTER 13

Fire Insurance

Sec.
83-13-1. Reinsurance.
83-13-3. Liabilities and reserves.
83-13-5. Amount of insurance.
83-13-7. Mortgagees protected in order of priority.
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§ 83-13-1. Reinsurance.

Every insurer authorized to issue policies in this state may reinsure in any other insurer any part or all of any risk or risks assumed by it; but such reinsurance, unless effected with an insurer authorized to issue policies in this state and subject to the payment of the tax thereon, shall not operate to permit any reduction of taxes through reinsurance effected with an insurer not authorized to issue policies in this state.

SOURCES: Codes, 1892, § 2341; 1906, § 2607; Hemingway's 1917, § 5070; 1930, § 5181; 1942, § 5691.

Cross References — Annual returns of reinsurance contracts, see § 83-5-57.

RESEARCH REFERENCES

Practice References. Business Insurance Law and Practice Guide, (Matthew Bender).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

ALR. Recovery under fire insurance policy for damage to party wall. 13 A.L.R.2d 619.

Applicability of value policy statute to partial fire loss. 36 A.L.R.2d 619.

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1842 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Insurance, Form No. 1081 (complaint, petition, or declaration for recovery on reinsurance policy by primary insurer against reinsurer).

CJS. 46 C.J.S., Insurance §§ 1720 et seq.

§ 83-13-3. Liabilities and reserves.

To determine the liability upon the contracts of an insurance company, other than life and real estate title insurance, and thence the amount such company shall hold as a reserve for reinsurance, the commissioner shall take the actual unearned portion of the premiums written in its policies.

SOURCES: Codes, 1906, § 2613; Hemingway's 1917, § 5076; 1930, § 5182; 1942, § 5692.

Cross References — Reserve liabilities of life insurance companies, see §§ 83-7-21 et seq.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 71.

CJS. 44 C.J.S., Insurance §§ 159-161, 174, 175.

§ 83-13-5. Amount of insurance.

No insurance company shall knowingly issue any fire insurance policy upon property within this state for an amount which, together with any existing insurance thereon, exceeds a fair value of the property, nor for a longer term than five (5) years. When buildings and structures are insured against loss by fire and, situated within this state, are totally destroyed by fire, the company shall not be permitted to deny that the buildings or structures insured were worth at the time of the issuance of the policy the full value upon which the insurance is calculated, and the measure of damages shall be the amount for which the buildings and structures were insured. No insurance company or agent thereof shall be permitted to attach a three-quarter value clause to insurance of this kind, and any fire insurance company or agent thereof who violates this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than Two Hundred Dollars ($200.00) nor more than One Thousand Dollars ($1,000.00) for each offense.

SOURCES: Codes, 1892, § 2337; 1906, § 2592; Hemingway's 1917, § 5056; 1930, § 5183; 1942, § 5693; Laws, 1912, ch. 224; Laws, 1936, ch. 206.

Cross References — Prohibition against disclosure of expiration date of insurance on mortgaged property, see § 83-13-10.

Personal liability of agent, see § 83-17-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
2. Applicability.
3. Policy provisions inconsistent with statute.
4. When loss deemed total.
5. Partial loss.
6. Concurrent insurance.
7. Insurance of personal property.

8. Waiver of benefit of statute.
9. Proof of value.

1. In general.

Mere fact that insurance company rejected claims under provisions of its policy and defendant sued and lost does not justify imposition of punitive damages, where insurance company had arguable reason not to pay claim; term legitimate or arguable reason is nothing more than expression indicating act or acts of alleged tortfeasor did not rise to heightened level of independent tort. Western Fire Ins. Co. v. Copeland, 651 F. Supp. 1051 (S.D. Miss. 1987), aff'd, 824 F.2d 970 (5th Cir. 1987).

Where, in an action by insureds against their insurer to recover under the policy for damage to plaintiffs' home and contents during a hurricane and there was a justifiable dispute as to the amount of the loss, the insureds were not entitled to interest until the amount of the claim was made certain or liquidated. Commercial Union Ins. Co. v. Byrne, 248 So. 2d 777 (Miss. 1971).

Where fire, rather than an explosion, was the dominant and efficient cause of the total destruction of property, the valued policy provisions of this section [Code 1942, § 5693] are applicable. Great Am. Ins. Co. v. Smith, 252 Miss. 62, 172 So. 2d 558 (1965), motion overruled, 252 Miss. 68, 174 So. 2d 499 (1965).

The local agent of an insurance company furnished with blank forms to be filled out, countersigned and issued by him, has all the powers of the general agent when issuing policies, and can waive any of the policy provisions. American Cent. Ins. Co. v. Meredith, 228 Miss. 402, 87 So. 2d 871 (1956).

Where building was a total loss as result of fire, and appraisers' determination of loss was ineffective because not based on value of property as stated in policy, interest on claim against insurer accrued from date of loss and not from sixty days after determination. Yorkshire Ins. Co. v. Brewer, 175 Miss. 538, 166 So. 361 (1936).

Lessee has insurable interest, and may recover full amount of fire policy issued to him on leased premises. Mississippi Fire Ins. Co. v. Planters' Bank, 138 Miss. 275, 103 So. 84 (1925).

Valued policy law held not violative of equal protection clause nor due process clause of the Const. Mississippi Fire Ins. Co. v. Planters' Bank, 138 Miss. 275, 103 So. 84 (1925).

2. Applicability.

Insureds' claim that an insurer violated Mississippi's Valued Policy statute, Miss. Code Ann. § 83-13-5, with regard to the insureds' homeowners policy and flood insurance policy failed because that statute applied only to fire insurance policies. Remel v. State Farm Fire & Cas. Co., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 15616 (S.D. Miss. Feb. 25, 2009).

3. Policy provisions inconsistent with statute.

Personal property, such as contents of building, does not come within valued policy statute; valued policy statute has initial application to mobile homes; operation of valued policy statutes sets value of mobile homes for purpose of recovery at face amount of insurance, and proof of loss as to value of total destroyed property is not essential. Foremost Ins. Co. v. Lowery, 617 F. Supp. 521 (S.D. Miss. 1985).

Where the loss by fire of a dwelling was total, no appraisal was required, any provision of the policy requiring an appraisal being written out by this statute, and a suit for the face amount of the policy was not barred by the failure of the insured, to select a competent and disinterested appraiser as requested by the insurer's attorney, pursuant to the provisions of the policy. Maryland Cas. Co. v. Legg, 247 So. 2d 812 (Miss. 1971).

Provision in policy that insurer shall not be liable beyond actual value destroyed by fire, for loss caused by ordinance or law regulating construction or repair of buildings, is void. Palatine Ins. Co. v. Nunn, 99 Miss. 493, 55 So. 44 (1911).

Co-insurance clauses, three-quarter clauses, and other like clauses in fire insurance policies must yield to the statute. Hartford Fire Ins. Co. v. Schlenker, 80 Miss. 667, 32 So. 155 (1902).

The three-quarter clause in a policy of fire insurance under this section [Code 1942, § 5693] is nugatory. Western Assurance Co. of Toronto, Can. v. Phelps, 77 Miss. 625, 27 So. 745 (1900).

The section [Code 1942, § 5693] supervenes all policies and writes out of them all stipulations inconsistent with itself. Western Assurance Co. of Toronto, Can. v. Phelps, 77 Miss. 625, 27 So. 745 (1900).

4. When loss deemed total.

In order for there to be only a "partial loss" within the terms of the valued policy statute, there must be a substantial, usable remnant of the building surviving and such surviving part must be susceptible to reasonable repairs and reconstruction, and where evidence sustained a finding that two walls of a dwelling were burnt down, the roof was damaged, all windows were broken out, and there was smoke and water damage throughout the structure, a jury was justified in concluding that the house was "totally destroyed" by fire within the meaning of the statute. Home Ins. Co. v. Greene, 229 So. 2d 576 (Miss. 1969).

Building held total loss where, though only partly burned, it is rendered unfit for purpose constructed and an ordinance or law prohibits reconstruction. Palatine Ins. Co. v. Nunn, 99 Miss. 493, 55 So. 44 (1911).

5. Partial loss.

In order for there to be only a "partial loss" within the terms of the valued policy statute, there must be a substantial, usable remnant of the building surviving and such surviving part must be susceptible to reasonable repairs and reconstruction, and where evidence sustained a finding that two walls of a dwelling were burnt down, the roof was damaged, all windows were broken out, and there was smoke and water damage throughout the structure, a jury was justified in concluding that the house was "totally destroyed" by fire within the meaning of the statute. Home Ins. Co. v. Greene, 229 So. 2d 576 (Miss. 1969).

Statute providing that where property is totally destroyed insurer could not deny that property at time of issuing policy was worth full value upon which insurance was calculated, held not to prohibit policy agreements for appraisement of a partial loss. Franklin Fire Ins. Co. v. Brewer, 173 Miss. 317, 159 So. 545 (1935), error overruled, 173 Miss. 332, 160 So. 387 (1935).

In case of a total loss of property the insured can recover of each insurer the full amount of his policy, but in case of partial loss he can recover only his actual loss. Hartford Fire Ins. Co. v. Schlenker, 80 Miss. 667, 32 So. 155 (1902).

6. Concurrent insurance.

Homeowners who obtained second fire insurance policy on home prior to expiration of first policy were not entitled to recover on either policy where both policies contain provision prohibiting homeowner from obtaining additional insurance. Mister v. Highlands Ins. Co., 650 F. Supp. 428 (N.D. Miss. 1986).

In consolidated actions brought by an insured on two fire policies which contained a clause that other insurance was prohibited unless the total amount of insurance was inserted on the first page of the policy, the insurer's defense that the insured had a third policy which was not mentioned in the first two policies was without merit, where the knowledge of local agent who issued the policy would be imputed to the insurer. American Cent. Ins. Co. v. Meredith, 228 Miss. 402, 87 So. 2d 871 (1956).

Where several concurrent policies have been written on the same property with the consent of the respective companies, under the statute each company is liable for the full amount of its policy. Western Assurance Co. of Toronto, Can. v. Phelps, 77 Miss. 625, 27 So. 745 (1900).

7. Insurance of personal property.

The valued policy statute does not apply to personal property contained in a building, and an insured who offered no evidence as to her loss on the contents of her house, which was totally destroyed by fire, was not entitled to recover under a policy insuring the contents of the house. Home Ins. Co. v. Greene, 229 So. 2d 576 (Miss. 1969).

Fire company can issue schedule policy covering both realty and personalty other than household and kitchen furniture and attach three-quarter clause with express stipulation limiting its application to items of personalty listed under separate heads. Darden v. Liverpool & London &

Globe Ins. Co., 109 Miss. 501, 68 So. 485 (1915).

Parties cannot agree that, for purpose of fire policy, machinery in building should be considered as personalty and subject to three-quarter clause. Darden v. Liverpool & London & Globe Ins. Co., 109 Miss. 501, 68 So. 485 (1915).

8. Waiver of benefit of statute.

Parties cannot agree that, for purpose of fire policy, machinery in building should be considered as personalty and subject to three-quarter clause. Darden v. Liverpool & London & Globe Ins. Co., 109 Miss. 501, 68 So. 485 (1915).

A provision in a fire insurance policy by which the insured undertook to agree to waive the statute is ineffectual. Hartford Fire Ins. Co. v. Schlenker, 80 Miss. 667, 32 So. 155 (1902).

The statute is not waived by the insured accepting a policy, the terms of which prescribe a different rule from the one laid down in it for fixing the amount of the loss to be paid. Western Assurance Co. of Toronto, Can. v. Phelps, 77 Miss. 625, 27 So. 745 (1900).

9. Proof of value.

When an insurer enters into a contract with its eyes open and receives the premium with full knowledge of the situation, it is bound to pay the face value of the policy, notwithstanding that such amount exceeds the value of the insurable interest. Mississippi Farm Bureau Mut. Ins. Co. v. Todd, 492 So. 2d 919 (Miss. 1986).

If insured property is totally destroyed, proof of the amount of loss is unnecessary. Birmingham Fire Ins. Co. v. McKnight, 246 Miss. 578, 151 So. 2d 409 (1963).

In consolidated actions brought by insured on two fire policies which contained a clause that other insurance was prohibited unless the full amount of insurance was inserted on the first page of the policy, wherein insurer's defense was that insured had a third policy which was not mentioned in the first two policies, the exclusion of insurer's testimony and photographs as to value was proper. American Cent. Ins. Co. v. Meredith, 228 Miss. 402, 87 So. 2d 871 (1956).

In an action on a fire insurance policy for the burning of a dwelling house, the admission of testimony of a general building contractor who testified as to the replacement cost of the house was not error. Paramount Fire Ins. Co. v. Anderson, 211 Miss. 372, 51 So. 2d 763 (1951).

Where building was a total loss as result of fire, and appraisers appointed under fire policy had not valued property prior to burning at amount stated in policy, their finding was ineffective in view of valued policy law. Yorkshire Ins. Co. v. Brewer, 175 Miss. 538, 166 So. 361 (1936).

Insured's failure to introduce proof of value did not preclude recovery on fire policy, regardless of extent of insurable interest. Hartford Fire Ins. Co. v. Clark, 154 Miss. 418, 122 So. 551 (1929).

Defense of overinsurance in fire policy held valid. Scottish Union & Nat'l Ins. Co. v. Warren Gee Lumber Co., 118 Miss. 740, 80 So. 9 (1918).

In view of this provision, insured's failure to furnish plans and specifications of house after demand in accordance with stipulation in policy held no defense to action to recover for loss. Mississippi Home Ins. Co. v. Barron, 91 Miss. 722, 45 So. 875 (1908).

Policy held valid, though property overinsured. Mississippi Home Ins. Co. v. Barron, 91 Miss. 722, 45 So. 875 (1908).

RESEARCH REFERENCES

ALR. What constitutes "vacancy" or "unoccupancy" within fire insurance policy on building other than dwelling. 36 A.L.R.3d 505.

What are "appurtenant" private structures within provision of property insurance policy expressly extending coverage to such structures. 43 A.L.R.3d 1362.

Depreciation as factor in determining actual cash value for partial loss under insurance policy. 8 A.L.R.4th 533.

Insured's nondisclosure of information regarding value of property as ground for avoiding liability under property insurance policy. 15 A.L.R.4th 1109.

Construction and effect of provisional or monthly reporting inventory insurance. 81 A.L.R.4th 9.

What constitutes "vacant land" within meaning of liability or property insurance policy provisions. 47 A.L.R.5th 535.

Am Jur. 43 Am. Jur. 2d, Insurance § 272.

14A Am. Jur. Pl & Pr Forms (Rev), Insurance, Form No. 661 (complaint, petition, or declaration for recovery on fire policy-loss exceeding face amount).

CJS. 44 C.J.S., Insurance § 383.

§ 83-13-7. Mortgagees protected in order of priority.

When, by an agreement with the assured or by the terms of a fire insurance policy taken out by a mortgagor, the whole or any part of the loss thereon is payable to the mortgagee or mortgagees of the property for their benefit, the company shall, upon satisfactory proof of the rights and title of the parties, in accordance with such terms and agreement, pay all mortgagees protected by such policy in the order of their priority of claim, as their claims shall appear, not beyond the amount of which the company is liable. Such payments shall be, to the extent thereof, payments and satisfaction of the liabilities of the company under such policy.

SOURCES: Codes, 1892, § 2338; 1906, § 2595; Hemingway's 1917, § 5059; 1930, § 5184; 1942, § 5694.

Cross References — Notification of creditors of loss of insured merchandise by fire, see § 15-3-9.

Prohibition against disclosure of expiration date of insurance on mortgaged property, see § 83-13-10.

Requirement for fire insurance upon property securing investment of domestic insurance company, see § 83-19-51.

Exemption from execution or attachment of proceeds of insurance on property, see § 85-3-1.

Priority of conveyances of same land, see §§ 89-5-1, 89-5-5.

JUDICIAL DECISIONS

1. In general.
2. Priority.

1. In general.

Mississippi law presumes an equitable lien in favor of mortgagee to proceeds from insurance procured by mortgagor in his name, after agreement between parties that property will be insured for mortgagee's benefit. General Star Indem. Co. v. Pike County Nat'l Bank, 706 So. 2d 227 (Miss. 1997).

Mortgagee is entitled to payment under fire insurance policy despite absence of mortgage clause in policy in mortgagee's favor where insurance was taken out by mortgagor in order to fulfill agreement for insurance coverage; it is error for court to direct verdict against alleged mortgagee simply on basis that name does not appear on policy. Merchants Nat'l Bank v. Southeastern Fire Ins. Co., 751 F.2d 771 (5th Cir. 1985).

Where the mortgagee on a second deed of trust gave both oral and written notice of the existence of the second deed of trust to the insurers on fire policies taken out by the mortgagors, and the second deed of trust provided that whatever insurance was left after payment to the first mortgagee should be payable to the second mortgagee, the insurers, in ignoring the second mortgagee's notice and settling with the mortgagors and the first mortgagee only, did so at their peril and became liable to the second mortgagee in the amount of his damage. Employers Mut. Cas. Co. v. Standard Drug Co., 234 So. 2d 330 (Miss. 1970).

2. Priority.

Mississippi statute requiring fire insurance company, in disbursing proceeds of fire insurance policy, to pay mortgagees in order of their priority of claim, to the extent policy itself, or agreement between insured-mortgagor and mortgagee, gives mortgagee an interest in proceeds, is simply a priority statute, designed to clarify mortgagee's position of recovery in relation to others, not a statute intended to provide mortgagee with equitable lien. General Star Indem. Co. v. Pike County Nat'l Bank, 706 So. 2d 227 (Miss. 1997).

RESEARCH REFERENCES

ALR. Right of holder of mortgage or lien to proceeds of property insurance payable to owner not bound to carry insurance for former's benefit. 9 A.L.R.2d 299.

Right of mortgagee to notice by insurer of expiration of fire insurance policy. 60 A.L.R.3d 164.

Right of mortgagee, who acquires title to mortgaged premises in satisfaction of mortgage, to recover, under fire insurance policy covering him as "mortgagee," for loss or injury to property thereafter damaged or destroyed by fire. 19 A.L.R.4th 778.

Fire insurance: insurable interest of one expecting to inherit property or take by will. 52 A.L.R.4th 1273.

Am Jur. 43 Am. Jur. 2d, Insurance § 499.

44A Am. Jur. 2d, Insurance §§ 1614, 1791.

14A Am. Jur. Pl & Pr Forms (Rev), Insurance, Form No. 662 (complaint, petition, or declaration against insurer for recovery on fire policy-mortgagees named as defendants to settle interests).

13 Am. Jur. Legal Forms 2d, Mortgages and Trust Deeds §§ 179:351 et seq. (insurance).

CJS. 44 C.J.S., Insurance § 269.

45 C.J.S., Insurance § 1326, 1327.

46 C.J.S., Insurance §§ 1630-1632, 1637.

§ 83-13-9. Mortgage clause.

Each fire insurance policy on buildings taken out or renewed on or after July 1, 1989, by a mortgagor or grantor in a deed of trust shall have attached or shall contain substantially the following mortgagee clause, viz:

Loss or damage, if any, under this policy, shall be payable to (here insert the name of the party), as ________ mortgagee (or trustee), as ________ interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; and in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same. The mortgagee (or trustee) shall notify this company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void. This company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for thirty (30) days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and this company shall have the right on like notice to cancel this agreement. In case of any other insurance upon the within described property, this company shall not be liable under this policy for a greater proportion of any loss or damage sustained than the sum hereby insured bears to the whole amount of insurance on said property issued to or held by any party or parties having an insurable interest therein, whether as owner, mortgagee, or otherwise. Whenever this company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, this company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all security held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of ________ claim. Nothing in the foregoing prescribed form shall be construed to in any manner modify the provisions of Section 83-13-5.

SOURCES: Codes, 1906, § 2596; Hemingway's 1917, § 5060; 1930, § 5185; 1942, § 5695; Laws, 1989, ch. 410, § 3, eff from and after July 1, 1989.

Cross References — Necessity of fire insurance upon property securing investment of domestic insurance company, see § 83-19-51.

JUDICIAL DECISIONS

1. In general.
2. Statute as part of policy.
3. Right of mortgagee to recover on policy.
4. Effects of acts of owner.
5. Mortgagee's liability for premiums.
6. Subrogation of insurer to rights of mortgagee.
7. Lien on proceeds.

1. In general.

Standard mortgage clause that is inserted in a fire insurance policy pursuant to Miss. Code Ann. § 83-13-9 creates a separate contract between the insurer and the mortgagee in which the owner has no interest. Reed v. Nationwide Mut. Fire Ins. Co., — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 83517 (S.D. Miss. Nov. 9, 2007).

Notice was required for termination of a binder providing builder's risk insurance on a home since the expiration date given in a builder's risk policy is only an initial forecast of when the construction will be completed and insurance is still needed until the date that construction is in fact complete and a permanent policy has been issued. Scottsdale Ins. Co. v. Deposit Guar. Nat'l Bank, 733 So. 2d 863 (Miss. Ct. App. 1999).

Phrase "as interest may appear" in standard union mortgage clause and statute making loss or damage payable to mortgagee or trustee on deed of trust as interests may appear refers to amount of promissory note or actual amount of debt and any interest accrued, rather than amount of debt secured by the property or mortgagee's interest in the property. National Farmers Union Property & Cas. Co. v. First Columbus Nat'l Bank, 669 So. 2d 767 (Miss. 1996).

Insurer did not convert insureds' equitable interest in their home, which suffered fire damage, when insurer took assignment of insureds' deed of trust from bank which held the mortgage; insurer paid the mortgage owed by insureds as required by statute, and took assignment on the deed of trust to which it was entitled. Dunn v. State Farm Fire & Cas. Co., 927 F.2d 869 (5th Cir. 1991).

Production of a "certificate of mailing" does not constitute conclusive proof of an insured's actual receipt of a cancellation notice. A certificate of mailing establishes a presumption that the notice reached its destination. However, this presumption may be rebutted by the insured who contends that he or she did not actually receive the notice, though mere denial of receipt is insufficient to create a triable issue of fact. In other words, proof of mailing of a notice of cancellation is sufficient proof of notice absent countervailing evidence of sufficient weight to rebut the presumption that it was received. Carter v. Allstate Indem. Co., 592 So. 2d 66 (Miss. 1991).

A 2-week delay by a mortgagee in notifying the insurer of the vacant status of insured property was reasonable under the mortgage clause of a fire insurance policy where the mortgage clause did not impose a time requirement on the mortgagee for notifying the insurance company of "any change of ownership, or occupancy or increase of hazard which shall come to the knowledge of said mortgagee...," despite the fact that the property was destroyed by fire before the insurer received word that it had been abandoned. Lumbermens Mut. Cas. Co. v. Thomas, 555 So. 2d 67 (Miss. 1989).

A hazard insurer of a mobile home who failed to exercise its absolute statutory duty, pursuant to § 83-13-9, to notify the lienholder that the policy would terminate unless the renewal premium were paid was liable under the policy when fire destroyed the mobile home after the policy lapsed, even though (1) the insurer sent two notices to the owner that the policy would expire unless renewed, (2) the owner failed to renew the policy, and (3) the policy was not continuous; moreover the insurer had the same obligation apart from the statute since the policy itself contained essentially the same language as the statute. Bankers & Shippers Ins. Co. v. Meridian Naval Fed. Credit Union, 431 So. 2d 1123 (Miss. 1983).

Where the terms "mortgagee clause" and "loss payable clause" in fire policies were ambiguous, they would be construed against the insurer, so that vendors, who held a vendor's lien on all assets of a lumber yard business, would be construed as mortgagees entitled to 10 days written notice of cancellation of coverage on equipment and materials, rather than strictly loss payees entitled to such notice only on building items, and where the vendors were given no notice of cancellation, their rights under the mortgage clause or loss payable clause were not impaired by an attempt of the insured and the insurers to cancel the policies. United States Fid. & Guar. Co. v. Arrington, 255 So. 2d 652 (Miss. 1971).

This statute has the laudable purpose of prohibiting or seeking to prohibit the issuance of excessive coverage on insured property, so that, in an action to recover under a policy which had a face value of $3,000 maintained on the interest of a named insured as the mortgagee of a dwelling, after the dwelling was destroyed by fire, the limitation of the recovery balance on the indebtedness due under the mortgage to $411.75, the balance due under the mortgage, did not violate the statute. Harrison v. American Motorists Ins. Co., 245 So. 2d 577 (Miss. 1971).

Provision rendering fire policy void if at time of its issuance the property was mortgaged or if it should thereafter be mortgaged without insurer's written consent, was ineffective to render policy void where insurer's soliciting agent knew at the time he accepted the application therefor that the property was mortgaged and that the insured was procuring a new mortgage loan to pay off the existing mortgages. Home Ins. Co. v. Northington, 198 Miss. 650, 23 So. 2d 537 (1945).

This section [Code 1942, § 5695] applies to insurance on building by mortgagor as well as that taken out by grantor in deed of trust. Scottish Union & Nat'l Ins. Co. v. Warren Gee Lumber Co., 118 Miss. 740, 80 So. 9 (1918).

This section [Code 1942, § 5695] does not prohibit oral agreement to issue mortgage clause. Hartford Fire Ins. Co. v. J.R. Buckwalter Lumber Co., 116 Miss. 822, 77 So. 798 (1918).

This provision does not create a new contract independent of liability to the assured, and a mortgagee is bound by an appraisement agreement in the policy. Aetna Ins. Co. v. Cowan, 111 Miss. 453, 71 So. 746 (1916).

2. Statute as part of policy.

Notwithstanding contention of Farmer's Home Administration that § 83-13-9 is automatically written into fire insurance policy wherein insured is grantor of deed of trust, as matter of public policy, and that Administration is thus entitled to protection provided mortgagees under that statute, statute cannot be given such broad construction in absence of mortgage clause naming Administration in homeowner's policy. Nationwide Mut. Fire Ins. Co. v. Dungan, 634 F. Supp. 674 (S.D. Miss. 1986), aff'd, 818 F.2d 1239 (5th Cir. 1987).

In a suit to collect as mortgagee on policies of fire insurance, plaintiff savings and loan association was entitled to recover on the second of two policies that were issued on the home at issue, even though the policy was void as to the homeowners because of their fraudulent representations and concealments, where, under the mortgage clause of the policy, coverage for the mortgagee could not be invalidated by any act or neglect of the homeowner; as to the insurer that had issued the first policy on the home, the mortgage clause provision of its policy was in full force and effect at the time of the fire where, contrary to statutory requirements, it had failed to give notice of cancellation to the mortgagee. Tolar v. Bankers Trust Sav. & Loan Ass'n, 363 So. 2d 732 (Miss. 1978).

This section [Code 1942, § 5695] automatically becomes a part of every fire insurance policy insuring property on which there is a mortgage. United States v. Sentinel Fire Ins. Co., 178 F.2d 217 (5th Cir. 1949).

Federal court in Mississippi, in deciding whether this section [Code 1942, § 5695] automatically becomes a part of every fire insurance policy insuring property on which there is a mortgage, is bound by the pertinent decisions of the Supreme Court of Mississippi. United States v. Sentinel Fire Ins. Co., 178 F.2d 217 (5th Cir. 1949).

Loss payable clause recognizing rights of mortgagee automatically writes this section [Code 1942, § 5695] into the policy. Scottish Union & Nat'l Ins. Co. v. Warren Gee Lumber Co., 118 Miss. 740, 80 So. 9 (1918).

This section [Code 1942, § 5695] automatically writes itself into every insurance contract. Bacot v. Phoenix Ins. Co., 96 Miss. 223, 50 So. 729, Am. Ann. Cas. 1912B,262 (1909).

3. Right of mortgagee to recover on policy.

Fact that an insurer waited one year after fire damaged an insured's home before making payment to the insured's mortgagee did not give rise to a bad faith claim by the insured because the insured had no standing to sue for breach of the standard mortgage clause required by Miss. Code Ann. § 83-13-9. Reed v. Nationwide Mut. Fire Ins. Co., — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 83517 (S.D. Miss. Nov. 9, 2007).

Mississippi statute providing that each fire insurance policy on buildings which is taken out by mortgagor or grantor under deed of trust shall have attached or contain a mortgage clause providing that loss or damage shall be payable to mortgagee or trustee, as his interest may appear, automatically writes into each fire insurance policy on mortgaged property in Mississippi a standard mortgage loss payable clause; statute creates duty on part of mortgagor and insurer to attach such a clause in favor of mortgagee in each fire insurance policy on building subject to mortgage. General Star Indem. Co. v. Pike County Nat'l Bank, 706 So. 2d 227 (Miss. 1997).

Standard union mortgage clause stating that mortgagee had right to receive loss payment, even if mortgagee started foreclosure, entitled mortgagee to policy limits minus amount received from foreclosure sale, where debt exceeded policy limits and amount received from sale. National Farmers Union Property & Cas.

Co. v. First Columbus Nat'l Bank, 669 So. 2d 767 (Miss. 1996).

When foreclosure does not fully satisfy mortgage debt, mortgagee may look to insurer for payment under standard union mortgage clause and may recover full amount of debt to limits of policy, but has no additional recourse against mortgagor; or mortgagee may foreclose and recover balance due under insurance policy, but has no additional recourse against insurer, if foreclosure does not fully satisfy debt. National Farmers Union Property & Cas. Co. v. First Columbus Nat'l Bank, 669 So. 2d 767 (Miss. 1996).

Holder of mortgage on property destroyed by fire could properly assign its interest in any claims and/or causes of action against insurance company arising out of loss to the property owner, with property owner remaining fully liable to mortgagee for amount still owed on mortgage, and such assignment is not champertous, as property owners who obtain assignment from mortgage company are not strangers to litigation against insurance company and have asserted interest separate and distinct from interest of mortgagee; in issues of propriety of assignment and claims of champerty, analysis is not focused on relationship between assignee and assignor but rather relationships between assignor and insurance company and assignees and insurance company. Stephen R. Ward, Inc. v. United States Fid. & Guar. Co., 681 F. Supp. 389 (S.D. Miss. 1988).

Unnamed mortgagees have only equitable lien under Miss Code Anno § 83-13-9, and such lien is subject to any defenses that may be asserted against mortgagor, as provision written into fire insurance policy by virtue of statute contains place for mortgagee's name to be filled in, thereby reflecting intent on part of legislature that there be some sort of agreement between insurance company and either owner or mortgagee that insurance be provided for mortgagee, and further, statute allows insurance company to cancel policy 10 days after giving notice to mortgagee, such that if statute applied to unnamed mortgagees, insurance company's right to cancel policy would be meaningless. Nationwide Mut. Fire Ins. Co. v. Dungan, 818 F.2d 1239 (5th Cir. 1987).

Mortgagee is entitled to payment under fire insurance policy despite absence of mortgage clause in policy in mortgagee's favor where insurance was taken out by mortgagor in order to fulfill agreement for insurance coverage; it is error for court to direct verdict against alleged mortgagee simply on basis that name does not appear on policy. Merchants Nat'l Bank v. Southeastern Fire Ins. Co., 751 F.2d 771 (5th Cir. 1985).

Repair of premises by mortgagor after fire does not prevent mortgagee from recovering fire insurance under mortgage clause. Talman Fed. Sav. & Loan Ass'n v. American States Ins. Co., 468 So. 2d 868 (Miss. 1985).

The trial court erred reversibly in failing to give a mortgagee's requested peremptory instruction that no material or substantial increase of hazard had occurred within the meaning of § 83-13-9, or within the meaning of the language of a policy of fire insurance, such as would defeat the mortgagee's claim for damages in the event of a fire, notwithstanding the fact that the insured was deeply in debt on the date of the fire, that he had been convicted of forgery, and that the premises had become vacant, where the insured had also been deeply in debt on the date the policy was issued, where he had been under indictment on the date the policy was issued, where the mortgagee's failure, if any, to notify the insurance company that the premises had become vacant, could have proximately caused or contributed to any loss suffered by the company, and where any change of ownership or occupancy did in fact become known to the insurance company within 24 hours after it had occurred. Weems v. American Sec. Ins. Co., 450 So. 2d 431 (Miss. 1984).

A mortgagee could not invoke the provision of Miss. Code § 83-13-9 that requires an insurer to give a mortgagee ten days' notice of cancellation of an insurance policy in which the mortgagee is a loss payee, where the mortgagee itself violated another insurance provision in a policy which it had obtained and caused such policy to be voided, and where the insurer on such policy had no previous notice, actual or constructive, of the existence of the other insurance on the subject property until the property was damaged by fire. Highlands Ins. Co. v. Allstate Ins. Co., 688 F.2d 398 (5th Cir. 1982).

Without ten days' notice to a mortgagee, as loss payee under a renewal fire insurance policy, the nonpayment of the premium on the renewal policy could not terminate the mortgagee's coverage pursuant to Miss. Code § 83-13-9. Highlands Ins. Co. v. Allstate Ins. Co., 688 F.2d 398 (5th Cir. 1982).

Defendant fire insurer was liable to a mortgagee for the amount of its mortgage after the insured dwelling burned, notwithstanding the insurer's contention that the policy had lapsed by its own terms because the renewal premium had not been paid, where the mortgagee did not receive 10 days notice of cancellation for nonpayment of premium, as required by this section. The policy's automatic cancellation provision was ineffective to the extent it conflicted with statutory requirements. National Sec. Fire & Cas. Co. v. Mid-State Homes, Inc., 370 So. 2d 1351 (Miss. 1979).

Where the union or standard mortgage clause is included in an insurance policy, the mortgagee is entitled to the proceeds of the policy, and the mortgagee's right to recover will not be invalidated by the act or negligence of the mortgagor of the insured's property. No act or default of any person other than the mortgagee or those claiming the proceeds under the mortgagee shall affect the rights of the mortgagee to recover in case of loss. Hartford Fire Ins. Co. v. Associates Capital Corp., 313 So. 2d 404 (Miss. 1975).

Where a contract for the sale of a lumber yard attached a vendors' lien upon all assets of the business, such lien being in effect a mortgage, and where the mortgagees were not given any written notice of cancellation of fire policies in which they were named loss payees, the mortgagor's attempt to cancel the policies before a hurricane did not relieve the insurers of liability to the mortgagees for loss or damage to the buildings. United States Fid. & Guar. Co. v. Arrington, 255 So. 2d 652 (Miss. 1971).

Failure of the mortgagee under the provisions of this section [Code 1942, § 5695] to notify the insurer of occupancy voids the policy only if the occupancy in fact increases the fire hazard. Peerless Ins. Co. v. Bailey Mtg. Co., 345 F.2d 14 (5th Cir. 1965).

The manifest purpose of the notice of occupancy provision in this section [Code 1942, § 5695] is to allow the insurer to protect itself against increased risk by increasing the premiums due, and where there is no increase of risk there can be no detriment to the insurance company from failure of the mortgagee to notify it of the occupancy; and there being no forfeiture of the policy the mortgagee can recover thereunder in the event of loss. Peerless Ins. Co. v. Bailey Mtg. Co., 345 F.2d 14 (5th Cir. 1965).

Where a contractor borrowing money from a bank gave a trust deed on a house he was constructing, then he obtained fire insurance on the house but through mistake the name of the bank was not inserted in the mortgage clause of the policy, and the house burned down, an equitable lien existed in the favor of the bank and it was entitled to the proceeds of the policy. Lititz Mut. Ins. Co. v. Miller, 210 Miss. 548, 50 So. 2d 221 (1951).

In action in federal court sitting in Mississippi brought by several fire insurance companies under the Federal Interpleader Act to determine to whom the proceeds of fire insurance policies, taken out by mortgagor, should be paid, mortgagee was held entitled to the proceeds as against the assignees of the mortgagor, since this section [Code 1942, § 5695] automatically becomes a part of the policy, notwithstanding the clause was added to the policy by the insurer at mortgagee's request before the fire without the consent of the mortgagor. United States v. Sentinel Fire Ins. Co., 178 F.2d 217 (5th Cir. 1949).

Pledging by mortgagee of secured notes does not bar recovery by him on policy with mortgage clause. Mechanics' & Traders' Ins. Co. v. Boyce, 114 Miss. 165, 74 So. 821 (1917).

Mortgagee may sue on policy though his interest is less than the amount due on its face, where amount due him is the only valid liability under the policy. Bacot v. Phoenix Ins. Co., 96 Miss. 223, 50 So. 729, Am. Ann. Cas. 1912B,262 (1909).

4. Effects of acts of owner.

Under this section, wrongdoing by insured does not relieve insurer of obligation to pay mortgagee. Saucier v. United States Fid. & Guar. Co., 765 F. Supp. 334 (S.D. Miss. 1991).

Clause in fire policy making loss payable to mortgagee as his interest might appear, and providing that mortgagee's interest should not be invalidated by any act of mortgagor, effects two policies of insurance, one to the mortgagor and the other to the mortgagee. Hennessey v. Helgason, 168 Miss. 834, 151 So. 724 (1934).

Where loss payable clause was made payable to trustee of vendor's lien as his interest might appear, such trustee was not affected by forfeitures and breaches of warranty committed by vendee. Scottish Union & Nat'l Ins. Co. v. Warren Gee Lumber Co., 118 Miss. 740, 80 So. 9 (1918).

5. Mortgagee's liability for premiums.

Under statute providing that, if mortgagor insures mortgaged property and fails to pay premiums, mortgagee shall pay premiums on demand, whether demand was made in reasonable time after mortgagor failed to pay is question of fact. Hennessey v. Helgason, 168 Miss. 834, 151 So. 724 (1934).

Under statute providing that, if mortgagor insures mortgaged property and fails to pay premiums, mortgagee shall pay premiums on demand, such demand must be within reasonable time after mortgagor's failure to pay. Hennessey v. Helgason, 168 Miss. 834, 151 So. 724 (1934).

Statute providing that, where mortgagor fails to pay premiums on insurance covering mortgaged property, mortgagee shall pay premiums on demand, imposes on mortgagor primary duty and on mortgagee secondary duty to pay premiums. Hennessey v. Helgason, 168 Miss. 834, 151 So. 724 (1934).

Where neither owner of property nor mortgagee secured by fire policy paid premium, but insurance agent did and loss occurred, agent held entitled to money arising from loss as credit on premium as against mortgagee. Barry & Brewer v. Wright, 168 Miss. 216, 150 So. 186 (1933).

6. Subrogation of insurer to rights of mortgagee.

Where insurer pays off loan secured by a first mortgage deed, it steps into the shoes of that creditor, and assumes that creditor's position of priority as to any remaining lien creditors; Insurer's pay-off secures full assignment of payee's rights. Southern Mississippi Planning & Dev. Dist. v. ALFA Gen. Ins. Corp., 790 So. 2d 818 (Miss. 2001).

Insurer's payment to insured's mortgagee was condition precedent to subrogation rights; policy stated that mortgage holder's rights would be transferred to insurer to extent of payment, and statute states that insurer is subrogated to rights of mortgagee receiving payment. National Farmers Union Property & Cas. Co. v. First Columbus Nat'l Bank, 669 So. 2d 767 (Miss. 1996).

Payment is condition precedent to insurer's subrogation rights against insured's mortgagee or trustee on deed of trust. National Farmers Union Property & Cas. Co. v. First Columbus Nat'l Bank, 669 So. 2d 767 (Miss. 1996).

Pursuant to § 83-13-9, where the insurer is not liable to the insured mortgagor but nevertheless pays a mortgagee, the insurer is subrogated to all rights of the mortgagee. McGory v. Allstate Ins. Co., 527 So. 2d 632 (Miss. 1988).

An insurer becomes subrogated to the rights of its insured's mortgagee when, but not before, the insurer makes payment to the mortgagee. Great Am. Ins. Co. v. Smith, 252 Miss. 62, 172 So. 2d 558 (1965), motion overruled, 252 Miss. 68, 174 So. 2d 499 (1965).

An insurer not liable to the mortgagor will, upon paying mortgagee the amount of his indebtedness, be subrogated to the mortgagee's rights, and is entitled to a transfer of the deed of trust, notes, and all security thereunder. Great Am. Ins. Co. v. Smith, 252 Miss. 62, 172 So. 2d 558 (1965), motion overruled, 252 Miss. 68, 174 So. 2d 499 (1965).

Attempted subrogation agreement between fire insurer and mortgagee, whereby insurer, which denied liability to insured upon fire loss because of mortgages on the property, admitted liability to mortgagee only on condition that upon payment the mortgagee would issue to the insurer a subrogation receipt, was invalid, and payment by insurer to mortgagee had the effect of fully liquidating the mortgage debt so that insured was entitled to cancelation of the mortgage and of the subrogation receipt. Home Ins. Co. v. Northington, 198 Miss. 650, 23 So. 2d 537 (1945).

This statute does not have the effect of subrogating an insurer, paying a loss to a mortgagee, to the rights of the mortgagee against an accommodation endorser of the note secured, where the accommodation endorser became such under an agreement with the maker that he would procure insurance on the mortgaged property with the loss payable to the mortgagee as his interest might appear. Wright v. North River Ins. Co., 23 F.2d 548 (5th Cir. 1928), cert. denied, 277 U.S. 604, 48 S. Ct. 601, 72 L. Ed. 1011 (1928).

Insurer, paying mortgagee and not alleging or proving that it was not liable to mortgagor, could not be subrogated to mortgagee's rights under subrogation provision. Hartford Fire Ins. Co. v. Green, 148 Miss. 627, 114 So. 865 (1927).

7. Lien on proceeds.

Deed of trust lender was entitled to equitable lien in proceeds of fire insurance policy, which was purchased by deed of trust borrowers' grantee in grantee's own name following quit claim deed that obligated grantee to perform all of borrowers' obligations under deed of trust agreement, where agreement obligated borrowers to procure insurance protecting property. General Star Indem. Co. v. Pike County Nat'l Bank, 706 So. 2d 227 (Miss. 1997).

Deed of trust lender, in its capacity as party with equitable lien in proceeds of insurance policy purchased by record owner of deed of trust property, was subject to any substantive defenses asserted by insurer against record owner. General Star Indem. Co. v. Pike County Nat'l Bank, 706 So. 2d 227 (Miss. 1997).

Proof of loss which was timely filed by deed of trust lender under policy purchased by party with record title to deed of trust property was sufficient to protect lender's interest in insurance proceeds, which could not be defeated by titleholder's failure to file proof of loss. General Star Indem. Co. v. Pike County Nat'l Bank, 706 So. 2d 227 (Miss. 1997).

RESEARCH REFERENCES

ALR. What constitutes "legal representative" or "personal representative" entitled to receive insurance proceeds on account of loss suffered by deceased. 40 A.L.R.4th 255.

Duty of mortgagee of real property with respect to obtaining or maintenance of fire or other casualty insurance protecting mortgagor. 42 A.L.R.4th 188.

Am Jur. 14A Am. Jur. Pl & Pr Forms (Rev), Insurance, Form No. 667 (complaint, petition, or declaration for recovery on fire policy-by mortgagee of insured property).

13 Am. Jur. Legal Forms 2d, Mortgages and Trust Deeds §§ 179:351 et seq. (insurance).

CJS. 44 C.J.S., Insurance § 499.

§ 83-13-10. Restrictions on disclosure of expiration date of insurance on mortgaged property.

(1) When a real property deed of trust or mortgage or a lending agreement in connection with a loan on real property provides that a mortgagor or borrower shall furnish insurance upon the mortgaged property, the mortgagee, assignee or creditor shall not disclose expiration dates or other policy information to other persons or parties, directly or indirectly, and such other persons or parties shall not request the disclosure of such information, so as to enable any person or party to solicit said insurance or any renewal thereof,

without first obtaining the written consent of the policyholder for such disclosure to be made when the mortgagee, assignee or creditor has been advised in writing by the insurer or its agent that the insurance on the property will be cancelled or will not be renewed.

(2) Willful violation of this section by any mortgagee, assignee or creditor, or by other persons or parties who may request the disclosure of such information from such mortgagee, assignee or creditor, shall be punishable by a fine not to exceed Five Hundred Dollars ($500.00) for each violation.

SOURCES: Laws, 1974, ch. 516, §§ 1, 2, eff from and after passage (approved April 4, 1974).

Cross References — Limitation on amount of fire insurance on property, see § 83-13-5.

Priority of mortgagees protected by fire insurance, see § 83-13-7.

§ 83-13-11. Conditions to be stated in full.

In all insurance against loss by fire the condition of insurance shall be stated in full, and the rules and bylaws of the company shall not be considered as a warranty or a part of the contract except so far as they are incorporated in full into the policy and are not in conflict with this chapter.

SOURCES: Codes, 1906, § 2597; Hemingway's 1917, § 5061; 1930, § 5186; 1942, § 5696.

Cross References — Conditions of life insurance contracts, see § 83-7-1.

Necessity of fire insurance on property securing investment of domestic insurance company, see § 83-19-51.

JUDICIAL DECISIONS

1. In general.

Waiver of provision of policy by insurer after issuance held not within this section [Code 1942, § 5696]. Caledonian Fire Ins. Co. v. Shepherd, 111 Miss. 175, 71 So. 314 (1916).

RESEARCH REFERENCES

ALR. Remedies of insured other than direct action on policy where fire on other property insurer refuses to comply with policy provisions for appointment of appraisers to determine amount of loss. 44 A.L.R.2d 850.

Insured's discontinued breach of warranty relating to use or keeping of prohibited articles as barring recovery on fire policy. 44 A.L.R.2d 1048.

Insurer's waiver of, or estoppel to assert, lack of insurable interest in property insured under fire policy. 91 A.L.R.3d 513.

Fire insurance: insurable interest of one expecting to inherit property or take by will. 52 A.L.R.4th 1273.

Insurer's duty, and effect of its failure, to provide insured or payee with copy of policy or other adequate documentation of its terms. 78 A.L.R.4th 9.

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance §§ 388-390.

§ 83-13-13. Proof of loss.

In case of destruction or damage of property by fire where the same is insured against fire, it shall be the duty of the insurance company or companies liable for such loss, within a reasonable time after receiving notice thereof, to furnish to the insured proper blanks upon which to make the required proof of such loss, with full directions as to what proof is required to secure the payment of the policy. If the insurance company fails to comply with this section, the failure of the insured to make proper proof of loss prior to the suit shall be no defense to a suit upon the policy, and in all cases the insured shall have a reasonable time in which to make such proof after the blanks and directions are received.

SOURCES: Codes, 1906, § 2593; Hemingway's 1917, § 5057; 1930, § 5187; 1942, § 5697.

Cross References — Notification of creditor of loss of insured merchandise by fire, see § 15-3-9.

JUDICIAL DECISIONS

1. In general.

Arguable reason to deny fire damage claim exists where insurance company, at time it denies claim, knows of substantial facts supporting arson defense; insurer can prevail on arson defense if it can show incendiary origin of fire, motive on part of insured to burn property, and opportunity of insured or his agent to burn property; insurance company is entitled to rely on conclusions of independent investigator engaged by company who discovered evidence suggesting that fire was of incendiary origin; presence of bars on windows and fact that doors to insured premises were locked tends to negate possibility that someone other than insured or his tenant entered house and set fire; evidence of incendiary origin and opportunity, combined with evidence tending to show that insured was experiencing financial difficulty at time of fire, although not particularly compelling, established motive of insured to burn property, and gave insurance company arguable reason to deny claim sufficient to avoid inference that company acted in bad faith. Sutton v. Northern Ins. Co., 681 F. Supp. 1221 (S.D. Miss. 1988).

If insurance company, by its habit of business, creates in mind of policy holder belief that payment may be delayed until demanded, or otherwise waives right to demand forfeiture, this is binding on company notwithstanding there may not have been compliance with express letter of policy, but that principle has no application unless custom or usage was one of which insured had knowledge and upon which he relied, and this must apply equally to all types of insurance relationships. Stephen R. Ward, Inc. v. United States Fid. & Guar. Co., 681 F. Supp. 389 (S.D. Miss. 1988).

In an action by a wholesale sporting goods dealer to recover insurance policy proceeds for a fire loss, the policy requirement that the insured furnish an inventory of the property damaged and destroyed within 60 days after loss was waived where, inter alia, the insurer failed to furnish the insured with the proper forms, as required by this section. United States Fid. & Guar. Co. v. Whitfield, 355 So. 2d 307 (Miss. 1978).

Under this section [Code 1942, § 5697], insurers could not raise the defense of no proof of loss when proper forms had not been furnished, and fire policy loss payees, after securing proof of loss forms elsewhere when their request to the insurers went unheeded, were not barred from testifying to value in excess of that stated in their proof of loss forms. United States

Fid. & Guar. Co. v. Arrington, 255 So. 2d 652 (Miss. 1971).

RESEARCH REFERENCES

ALR. Denial of liability as waiver of proofs of loss required by insurance policy. 49 A.L.R.2d 161.

Necessity and sufficiency of insurer's demand, under fire insurance policy, for examination of insured or his books or papers, or for proofs of loss, certificates, or sworn statements. 4 A.L.R.3d 631.

Overvaluation in proof of loss of property insured as fraud avoiding fire insurance policy. 16 A.L.R.3d 774.

Am Jur. 44 Am. Jur. 2d, Insurance §§ 1444 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Insurance, Form No. 323 (answer containing defense as to proof of loss not timely filed-policy provision set forth); Form No. 333 (answer containing defense as to failure to give notice or make sufficient proof of loss); Form No. 334 (instructions to jury as to proof of loss); Form No. 343 (complaint, petition, or declaration-allegation as to waiver of proof of loss-investigation by insurer after notice of loss); Form No. 346 (instruction to jury as to waiver of proof of loss-acceptance of proof in different format-effect of insurer's failure to furnish blank form).

17 Am. Jur. Proof of Facts 2d 103, "Vacancy" of Insured Commercial Structure.

CJS. 45 C.J.S., Insurance §§ 1445-1492.

§ 83-13-15. Repealed.

Repealed by Laws, 1977, ch. 341, eff from and after passage (approved March 11, 1977).

[Codes, 1906, § 2594; Hemingway's 1917, § 5058; 1930, § 5188; 1942, § 5698; Laws, 1934, ch. 299]

Editor's Note — Former § 83-13-15 required an insurance company to notify the commissioner of insurance of the adjustment or settlement of any loss by fire to property located in Mississippi.

§ 83-13-17. Industrial fire insurance policies.

(1) Industrial fire insurance policies are defined as policies issued by companies which write fire insurance through weekly premium agents operating on the debit agency system and which meet the other requirements of this section. Any such policy with limits in excess of Fifteen Hundred Dollars ($1500.00) may be written by such weekly premium agents operating on a debit system or by any agent qualified and licensed to write fire insurance in the State of Mississippi, and in the case of policies over Fifteen Hundred Dollars ($1500.00) written by agents other than weekly premium agents operating on a debit system, premiums may be collected as much as six (6) months in advance on the basis of filings made and approved by the Commissioner of Insurance as otherwise provided in this title. On all other industrial fire policies in the State of Mississippi, carriers and agents shall not collect premiums for more than four (4) months in advance.

The limit of risk of all industrial fire insurance policies issued as such in the State of Mississippi shall not exceed Forty Thousand Dollars ($40,000.00) on any one (1) dwelling risk of fire and allied lines, nor Twenty Thousand

Dollars ($20,000.00) on the contents risk of fire and allied lines on any one (1) dwelling, nor Twenty Thousand Dollars ($20,000.00) on the risk of real or personal property loss resulting from burglary or theft.

(2) The Commissioner of Insurance shall generally supervise and regulate the operation of industrial fire insurance and allied lines.

SOURCES: Codes, 1942, § 5698.5; Laws, 1958, ch. 453, §§ 1-3; Laws, 1966, ch. 530, § 1; Laws, 1975, ch. 407; Laws, 1980, ch. 406; Laws, 1983, ch. 346; Laws, 1987, ch. 324, § 1; Laws, 1987, ch. 422, § 51; Laws, 1993, ch. 310, § 1; Laws, 2004, ch. 523, § 2, eff from and after July 1, 2004.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-13-19. Unauthorized companies denied access to courts.

No action shall be maintained by any insurance company in any court in the state upon any policy or contract of fire insurance issued upon any property situated in the state by any company, association, partnership, individual, or individuals that have not been authorized to transact such insurance business in this state.

SOURCES: Codes, 1892, § 2347; 1906, § 2652; Hemingway's 1917, § 5118; 1930, § 5199; 1942, § 5709.

Cross References — Regulation of placement of direct lines of insurance with unlicensed insurers, see §§ 83-21-17 et seq.

RESEARCH REFERENCES

Am Jur. 44 Am. Jur. 2d, Insurance §§ 763-771.

§ 83-13-21. Information required of insurers in case of fire losses.

(1) The State Chief Deputy Fire Marshal, the Commissioner of Insurance or any other authorized law enforcement authority charged with the responsibility of investigating a fire loss of real or personal property which may have resulted from a fire of incendiary origin may require, in writing, any insurance company insuring the loss under investigation to release any information in its possession which is pertinent to such a loss. The information shall include, but is not limited to:

(a) Any insurance policy relevant to a fire loss under investigation and any application for such a policy;

(b) Policy premium payment records;

(c) History of previous claims made by the insured for fire loss; and

(d) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other relevant information or evidence.

(2) In the absence of malice any insurance company or agent thereof who furnishes information on its behalf shall be immune from liability for damages in a civil action arising by virtue of compliance with the provisions of this section.

(3) As used in this chapter, "insurance company" shall include the Mississippi Insurance Underwriting Association.

(4) Any insurance company providing information to an authorized agency pursuant to subsection (1) of this section, or any owner, insured tenant or resident of property which is the subject of a report, shall have the right to request of such agency relevant information in accordance with Section 45-11-1.

(5) Any insurance company that willfully violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00) and the Commissioner of Insurance may revoke the license of such company to transact the business of insurance in this state.

SOURCES: Laws, 1981, ch. 473, § 1; Laws, 1983, ch. 384; Laws, 1988, ch. 584, § 7; Laws, 1998, ch. 406, § 1, eff from and after July 1, 1998.

Cross References — Duty of state fire marshal to investigate causes of fires, see § 45-11-1.

Authorization for the board of supervisors of any county and the governing body of any municipality to contribute funds directly to any fire protection district or volunteer fire department serving the county or municipality to meet any standards established by the commissioner of insurance as provided in this section, see § 83-1-39.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Right of innocent insured to recover under fire policy covering property, intentionally burned by another insured. 11 A.L.R.4th 1228.

§ 83-13-23. Insurer required to pay volunteer fire department for protecting property insured by insurer.

Any insurance company shall pay to the responsible volunteer fire department a minimum of One Hundred Dollars ($100.00) for each initial response to save from destruction by fire any structures which are located in areas rated as Class 9 or 10 and which are insured by that insurance company.

SOURCES: Laws, 1991, ch. 540, § 1; Laws, 1994, ch. 482, § 1, eff from and after passage (approved March 22, 1994).

ATTORNEY GENERAL OPINIONS

There is no authority for a municipality to charge a fee of $ 500.00 to an insurance company providing fire insurance coverage to its insured in the event of a fire within the municipality to reimburse the municipality for the costs of fighting the fire. Tyner, Apr. 6, 2001, A.G. Op. #01-0198.

§ 83-13-25. Form to be used by fire departments for minimum payments from insurers.

The Commissioner of Insurance shall prepare a uniform form to be used by fire departments for the minimum payments. All insurance companies doing business in the state shall accept the form authorized by the commissioner.

SOURCES: Laws, 1991, ch. 540, § 2, eff from and after July 1, 1991.

CHAPTER 14

Homeowners' and Farmowners' Insurance [Repealed]

§§ 83-14-1 through 83-14-7. Repealed.

Repealed by Laws, 1987, Ch 422, § 33, eff from and after January 1, 1988. § 83-14-1 through § 83-14-7. [En Laws, 1975, ch 469, §§ 1-4]

Editor's Note — Former § 83-14-1 provided that multiple line insurance companies could combine in a single policy the perils of fire and allied lines with the perils of casualty insurance.

Former § 83-14-3 provided that combined fire and casualty insurance be issued only on approved standard policy forms, and restricted coverage to homeowners and farmowners.

Former § 83-14-5 provided for audits of the rates charged for combined fire and casualty insurance.

Former § 83-14-7 provided that companies issuing combined insurance also offer comprehensive dwelling policies.

CHAPTER 15

Title Insurance

Sec.
83-15-1. Formation of company.
83-15-3. License; continuous agent certificate.
83-15-5. Capital requirements.
83-15-7. Reserve for losses.
83-15-9. Reserve for unearned premiums and reinsurance.
83-15-11. State and political subdivisions may secure title insurance.

§ 83-15-1. Formation of company.

Companies may be formed in the same manner provided in this chapter for the purposes of abstracting title to real estate, furnishing information in relation thereto, and insuring owners and others interested therein against loss by reason of incumbrances and defective titles. Such companies shall not be subject to the provisions of this chapter except as regards the manner of their formation as follows, to wit: Any company, before it shall issue any policy of insurance or guaranty, shall file with the insurance commissioner a certified copy of the record of the certificate of its organization in the office of the secretary of state, and shall obtain from the commissioner of insurance his certificate that it has complied with the laws applicable to it and is authorized to do such business. Every corporation which issues policies of title insurance or guaranty shall, on or before the first day of March of each year, file in the office of the insurance commissioner a statement such as he may require, of its condition and of its affairs for the year ending on the preceding thirty-first of December, signed and sworn to by its president, secretary, treasurer, or one of its directors; and for neglect to file such annual statement shall be liable to the same penalties as are imposed upon insurance companies generally.

SOURCES: Codes, 1892, § 2336; 1906, §§ 2588-2590; Hemingway's 1917, §§ 5052-5054; 1930, § 5164; 1942, § 5671; Laws, 1952, ch. 297; Laws, 1958, ch. 441 (approved February 7, 1958).

Cross References — Exemption of title insurance company from penalty for practice of law without license, see § 73-3-55.

Procedure for organizing insurance company, see § 83-19-11.

RESEARCH REFERENCES

Practice References. Business Insurance Law and Practice Guide, (Matthew Bender).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

ALR. Measure, extent, or amount of recovery on policy of title insurance. 60 A.L.R.2d 972.

Duty of applicant or his agent to disclose facts arising or discovered after application for title insurance. 75 A.L.R.3d 600.

Title insurance: exclusion of liability for defects, liens, or encumbrances created, suffered, assumed, or agreed to by the insured. 87 A.L.R.3d 515.

What constitutes a charge, encumbrance, or lien within contemplation of title insurance policy. 87 A.L.R.3d 764.

Construction of clause in title insurance policy excepting defects resulting from the rights of parties in possession. 94 A.L.R.3d 1188.

Defect in, or condition of, adjacent land or way as within coverage of title insurance policy. 8 A.L.R.4th 1246.

Title insurance company's rights in title information. 38 A.L.R.4th 968.

Am Jur. 44 Am. Jur. 2d, Insurance §§ 1440-1442.

CJS. 45 C.J.S., Insurance §§ 1269-1284.

§ 83-15-3. License; continuous agent certificate.

The commissioner shall annually license such companies as issue policies of title insurance or contracts of guaranty and issue continuous agent certificates as prescribed in Sections 83-5-73 and 83-17-5, Mississippi Code of 1972, and shall have the same power and authority to visit and examine such companies as he has in the case of domestic insurance companies. But persons licensed as fire insurance agents and persons who are practicing attorneys at law may act as agent for any such company without additional license.

SOURCES: Codes, 1892, § 2336; 1906, §§ 2588-2590; Hemingway's 1917, §§ 5052-5054; 1930, § 5164; 1942, § 5671; Laws, 1952, ch. 297; Laws, 1958, ch. 441; Laws, 1990, ch. 355, § 1, eff from and after July 1, 1990.

Cross References — Regulation of agents, see §§ 83-17-201 et seq.
Licensing of agents, see § 83-21-17.

RESEARCH REFERENCES

Am Jur. 44 Am. Jur. 2d, Insurance §§ 1440-1442.

CJS. 45 C.J.S., Insurance §§ 1269 et seq.

§ 83-15-5. Capital requirements.

(1) A corporation created as herein provided shall not issue any title insurance policy until it has capital of not less than One Hundred Fifty Thousand Dollars ($150,000.00) and surplus of not less than Seventy-five Thousand Dollars ($75,000.00). The total amount of any policy issued by such corporation without reinsurance shall not exceed fifty percent (50%) of the capital and surplus of the company, as reflected by its latest statement to the commissioner. In transactions where a primary risk is carried by another title insurance company, a domestic title insurance company may issue its reinsurance or coinsurance for an amount not exceeding its capital and surplus.

(2) A corporation created as herein provided shall deposit with the State Treasurer fifty percent (50%) of its capital stock, either in cash or in such bonds or securities in which the company is authorized by law to invest its funds. Upon such deposit and evidence, by affidavit or otherwise, satisfactory to the Commissioner of Insurance that the capital and surplus is all paid in and that the company is the actual and unqualified owner of the securities representing

the paid-up capital and surplus, he shall issue to the company his certificate authorizing it to transact business in this state.

SOURCES: Codes, 1892, § 2336; 1906, §§ 2588-2590; Hemingway's 1917, §§ 5052-5054; 1930, § 5164; 1942, § 5671; Laws, 1952, ch. 297; Laws, 1958, ch. 441; Laws, 2001, ch. 433, § 2, eff from and after July 1, 2001.

Cross References — Capital required for other classes of companies, see § 83-19-31.

RESEARCH REFERENCES

ALR. Measure, extent, or amount of recovery on policy of title insurance. 60 A.L.R.2d 972.

Am Jur. 44 Am. Jur. 2d, Insurance §§ 1440-1442.

CJS. 45 C.J.S., Insurance §§ 1269 et seq.

§ 83-15-7. Reserve for losses.

A corporation created as provided in this chapter shall establish and maintain a reserve for losses in an amount which shall be not less than (1) ten percent (10%) of the amount of all premiums received by the corporation on and after January 1, 1952, or (2) Fifty Thousand Dollars ($50,000.00) whichever is the lesser.

SOURCES: Codes, 1892, § 2336; 1906, §§ 2588-2590; Hemingway's 1917, §§ 5052-5054; 1930, § 5164; 1942, § 5671; Laws, 1952, ch. 297; Laws, 1958, ch. 441 (approved February 7, 1958).

Cross References — Reserves required of insurance companies, see § 83-5-23.
Reserve required of mutual company, see § 83-31-31.

RESEARCH REFERENCES

ALR. Measure, extent, or amount of recovery on policy of title insurance. 60 A.L.R.2d 972.

Am Jur. 44 Am. Jur. 2d, Insurance §§ 1440-1442.

CJS. 45 C.J.S., Insurance §§ 1269 et seq.

§ 83-15-9. Reserve for unearned premiums and reinsurance.

A corporation created as provided in this chapter shall establish, segregate and maintain, in addition to the reserve for losses as provided in Section 83-15-7, a reserve for unearned premiums and reinsurance during the period hereinafter provided, which shall at all times and for all purposes be deemed and shall constitute unearned portions of the original premiums and shall be charged as a reserve liability of such corporation in determining its financial condition. The assets constituting the unearned premium reserve shall be withdrawn from the use by the corporation for its general purposes, shall be impressed with a trust for the benefit of the corporation's title insurance policyholders, and shall be available for reinsurance of title insurance policies in the event of the insolvency of the corporation. The income from such unearned premium reserve shall be included in the general income of the corporation and may be used by such corporation for any lawful corporate purposes. The unearned premium reserve of every corporation shall be cumulative and shall consist of:

(a) An amount equal to the unearned premium reserve previously required to be held pursuant to Section 83-15-9 as of March 4, 1977;

(b) The amount of all additions required to be made to such reserve by this section; and less

(c) The withdrawals from such reserve as required by this section.

On the last day of each month after March 4, 1977, each corporation shall add to its unearned premium reserve, with respect to each title insurance policy or contract or reinsurance agreement issued by it, a sum equal to ten percent (10%) of all premiums received during such month. The amounts set aside as additions to such unearned premium reserve shall be deducted in determining the net income of the corporation. Upon the expiration of one hundred eighty (180) months after the month of the issuance of each title insurance policy, contract or reinsurance agreement that portion of the assets of the unearned premium reserve attributable to said title insurance policy, contract or reinsurance agreement shall be released and withdrawn from said reserve, shall no longer constitute part of said reserve, shall be included in the income of the corporation, and may then be used by the corporation for any lawful corporate purposes.

SOURCES: Codes, 1892, § 2336; 1906, §§ 2588-2590; Hemingway's 1917, §§ 5052-5054; 1930, § 5164; 1942, § 5671; Laws, 1952, ch. 297; Laws, 1958, ch. 441; Laws, 1977, ch. 328, § 2, eff from and after passage (approved March 4, 1977).

Editor's Note — Section 1 of ch. 328, Laws of 1977, provides:

"SECTION 1. The purposes of this act [amending Code 1972 § 83-15-9] are to require the segregation of assets constituting unearned premium reserves from the general assets of title insurance companies, and to codify current interpretations of Section 83-15-9 by the Department of Insurance and the Attorney General. Section 83-15-9 prevents a title insurance company from using the assets constituting the unearned premium reserve for general corporate purposes or for purposes other than the protection of title insurance policyholders, and under this amendment the same restrictions will continue to apply."

Cross References — Reserve liabilities of life insurance companies, see §§ 83-7-21 et seq.

Determination of reserve liabilities of companies other than life and real estate title insurance, see § 83-13-3.

RESEARCH REFERENCES

ALR. Measure, extent, or amount of recovery on policy of title insurance. 60 A.L.R.2d 972.

Am Jur. 44 Am. Jur. 2d, Insurance §§ 1440-1442.

CJS. 45 C.J.S., Insurance §§ 1269 et seq.

§ 83-15-11. State and political subdivisions may secure title insurance.

The State of Mississippi, its agencies, special districts, counties, municipalities, commissions, and other public bodies authorized by law to acquire real estate, or an interest in real estate, hereafter acquiring real estate or an interest in real estate are hereby authorized, in their discretion, to secure the protection of title insurance from companies qualified to do business in this state.

The action of any such public body which heretofore has secured the protection of such title insurance is hereby ratified, approved, and confirmed.

The authority hereby conferred to such public bodies by this section shall be limited to real estate or an interest in real estate hereafter acquired by such public bodies in the furtherance of any BAWI, port, housing, industrial program, or other development authorized by law.

SOURCES: Codes, 1942, § 5671.5; Laws, 1960, ch. 372, §§ 1-3.

RESEARCH REFERENCES

Am Jur. 44 Am. Jur. 2d, Insurance §§ 1440-1442.

CJS. 45 C.J.S., Insurance §§ 1269 et seq.

CHAPTER 17

Insurance Agents, Solicitors, or Adjusters

Article 1. General Provisions 83-17-1
Article 2. Licensing of Insurance Producers 83-17-51
Article 3. Regulation of Agents for Life, Health, or Accident Insurers 83-17-101
Article 5. Regulation of Agents for Fire and Other Insurers 83-17-201
Article 6. Prelicensing and Continuing Education for Insurance Agents; Required for Licensure 83-17-251
Article 7. Remedies of Agents 83-17-301
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ARTICLE 1.

GENERAL PROVISIONS.

SEC.
83-17-1. Agent defined.
83-17-3. Personal liability.
83-17-5. Agent certificate; notification of nonrenewal required.
83-17-7. Commission to unauthorized agent unlawful.
83-17-9, 83-17-11. Repealed.
83-17-13. Penalty for signing blank policy.
83-17-15, 83-17-17. Repealed.
83-17-19. Penalty for soliciting without license.
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83-17-37. Expiration of license; application for renewal.
83-17-39. Examination of applicants; classification of applicants; textbooks and learning materials.
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83-17-43. Repealed.
83-17-45. Prohibited acts; liability.
83-17-47. Commissioner's subpoena power.

§ 83-17-1. Agent defined.

Whenever used in this chapter, the following words shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Agent" means an insurance producer as defined in this section.

(b) "Nonactive agent" means an individual who is retired, disabled or has not obtained from the Commissioner of Insurance a current continuous certificate. A nonactive agent shall not solicit new business or service existing businesses, but may receive renewal commissions.

(c) "Supervising general agent" refers to and includes any person, partnership, association or corporation having authority to serve as trustees, managers or administrators, except attorneys at law, for such licensed insurance companies or their insureds in the handling of insurance programs underwritten by such licensed insurance companies, or in which they may be participating.

(d) "Excess risk" means all or any portion of an insurance risk or contract of annuity for which application is made to an agent and which exceeds the amount of insurance or annuity which will be provided by the insurer for which such agent is licensed.

(e) "Rejected risk" means an insurance risk or annuity contract for which application has been made to an agent and which insurance or annuity contract is declined by the insurer for which such agent is licensed.

(f) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

(g) "Commissioner" means the Commissioner of Insurance of the State of Mississippi.

(h) "Controlled business" means policies of insurance to be issued to a producer, agent or to his relatives, business associates, employers or employees, or in which they or either of them have an interest. No license shall be granted or renewed to any agent or producer until the applicant certifies with the Commissioner of Insurance that the applicant shall in good faith engage in the insurance business as agent or producer, and that he is not seeking a license for the purpose of acquiring or saving commissions, premiums or other valuable considerations on "controlled business." A violation of this paragraph shall be deemed to be probable if the commissioner finds that during any twenty-four-month period aggregate commissions or other compensations accruing in favor of the applicant with respect to his own interests or those of his family, relatives, employers, employees or business associates, as provided herein, have exceeded or will exceed thirty-five percent (35%) of the aggregate amount of commissions accruing to him as agent or his agency during such period of time. Nothing herein contained shall prohibit the licensing under a limited license as to motor vehicle physical damage insurance, any person employed by or associated with a motor vehicle sales agency with respect to insurance on a motor vehicle sold, serviced or financed by it. Whenever employment is terminated of any such person employed by or associated with any such agency, the Commissioner of Insurance shall be notified, and the license shall be cancelled immediately. It is further provided that the provisions of this paragraph likewise shall not apply with respect to sales of insurance by a lender or its affiliate covering the insurable interest of the lender.

SOURCES: Codes, 1892, § 2342; 1906, § 2615; Hemingway's 1917, § 5078; 1930, § 5196; 1942, § 5706; Laws, 1989, ch. 543, § 1; Laws, 2001, ch. 510, § 31; Laws, 2009, ch. 448, § 5, eff from and after Nov. 1, 2009.

Amendment Notes — The 2009 amendment effective November 1, 2009, deleted former (b), which defined "insurance solicitor," and redesignated the remaining subsections accordingly; in (b), substituted "nonactive agent" for "inactive agent" both times it appears; and in (h), deleted "or solicitor" following "issued to a producer, agent" in the first sentence, substituted “until the applicant certifies” for “until the applicant files an affidavit” in the second sentence, substituted “twenty-four-month period” for “twelve-month period” in the third sentence, and made a minor stylistic change.

Cross References — Privilege taxes on insurance agents, see §§ 27-15-85 et seq.

Penalty for acting as adjuster without license, see § 83-17-17.

Definition of agent for surety company, see § 83-27-7.

License required of agent or representative, as defined in this section, of sponsor of legal expense insurance plan, see § 83-49-47.

Penalty for acting as agent of company not complying with law, see § 97-23-31.

JUDICIAL DECISIONS

1. In general.
2. Who are agents.
3. Agents' powers, generally.
4. Agents' knowledge as imputable to insurer-generally.
5. —Notice to agent of claim or loss.
6. —Knowledge binding notwithstanding contrary provision in application or policy.
7. —Question of fact as to what agent knew.
8. —Agent's exercise of discretion in determining insurability.
9. Agents' act or statements as binding insurer—generally.
10. —Premiums.
11. —Waiver.

1. In general.

In an action pertaining to the cancellation of an insurance policy which turned on whether the procuring agent was in fact or law acting on behalf of the insurer when the policy was canceled, it was error for the court to instruct the jury in the exact language found in the statute. While the language of the statute seemed all encompassing, prior judicial interpretations of it had narrowed its scope. Booker v. Pettey, 770 So. 2d 39 (Miss. 2000).

Miss. Code Annotated § 83-17-1 is written in broadest terms, and it creates agency relationships where they would not exist at common law. Mississippi v. Richardson, 817 F.2d 1203 (5th Cir. 1987).

Life insurance corporation did not enter into binding contract for credit life and disability insurance with mortgagee when mortgagee indicated on mortgage loan disclosure form prepared by mortgagor that he wished to obtain credit insurance, and mortgagor, as agent for insurance company, was not authorized to accept risk of any kind or to make any contract of insurance, insurance company is not liable for acts of agents outside scope of their working authority under agency relationship, and mortgagor did not have authority to waive insurance company's requirement of submission of written application completed by mortgagee, and further, Mississippi Code § 83-17-1 is not applicable where mortgagor was acting as agent for mortgagee, as agent for insurance company, and as agent of employee bank, such that mortgagee cannot pick and choose principal that must bear burden of any errors caused by their shared agent's errors. Hancock Bank v. Integon Life Ins. Corp., 660 F. Supp. 459 (S.D. Miss. 1986).

Insurance company may not terminate employee's coverage under group insurance plan without notice to employee for failure of employer to pay premiums collected by employer from employee. Dearman v. Prudential Ins. Co. of Am., 727 F.2d 479 (5th Cir. 1984).

The purpose of the statute defining an insurance agent is to prevent insurance companies from avoiding legal liability by operating through third persons for whom they later deny all responsibility; the purpose is not to fix the scope of the authority of insurance agents. Mitchell v. Aetna Cas. & Sur. Co., 579 F.2d 342 (5th Cir. 1978).

This section does not apply so as to make the adjuster of a liability insurance company the agent of the insured. Southern Pine Superior Stud Corp. v. Herring, 207 So. 2d 632 (Miss. 1968).

The insurance company which issued a major medical policy to the plaintiff was bound by the acts of the insurance agency with which the plaintiff dealt, where the insurer did not notify the plaintiff insured that the agency relationship between it and the local agency had been terminated. American Cas. Co. v. Whitehead, 206 So. 2d 838 (Miss. 1968).

The word "adjust" means "settle" in the sense of paying. Napp v. Liberty Nat'l Life Ins. Co., 248 Miss. 320, 159 So. 2d 164 (1963).

This section applies only to acts of insurance agents before and up to and including the consummation of the insurance and, after that, what takes place in the examination and adjustment of a loss, and as to all other matters and things, principles of the common law govern. Old Colony Ins. Co. v. Fagan Chevrolet Co., 246 Miss. 725, 150 So. 2d 172 (1963).

The manifest purpose of this section is to enable the state to effectually supervise insurance companies and their agents. Saucier v. Life & Cas. Ins. Co., 189 Miss. 693, 198 So. 625 (1940).

The statute making soliciting agent the agent of insurance company is in derogation of common law, and must not be extended beyond its intent and terms. Travelers' Fire Ins. Co. v. Price, 169 Miss. 531, 152 So. 889 (1934).

Statute making soliciting agent the agent of insurance company held applicable only to acts of agent before and up to and including consummation of insurance, and acts of agent in examination and adjustment of loss. Travelers' Fire Ins. Co. v. Price, 169 Miss. 531, 152 So. 889 (1934).

Statute of forum making proof of enumerated facts conclusive evidence of agency for insurer held in derogation of common law and inapplicable to case where insurer, its agents, and insured were residents of Tennessee and all essential acts were performed in such state. Interstate Life & Accident Co. v. Pannell, 169 Miss. 50, 152 So. 635 (1934).

2. Who are agents.

Where county obtained public officials liability insurance from insurance company through local, independent agent, which independent agent in turn contacted insurance wholesaler, which wholesaler dealt directly with insurance company, independent agent was insurance company's "agent" under Miss. Code Annotated § 83-17-1, as independent agent gave county blank application form for insurance and then sent completed form to insurance wholesaler for quotation, such that independent agent "took or transmitted" application to insurance company via insurance wholesaler, and after insurance company gave price quotation and forwarded it to insurance wholesaler, who forwarded it to independent agent, independent agent relayed quotation to county, thus performing "act or thing in the making" of insurance contract, and therefore independent agent was acting "on behalf of" or "for" insurance company, and county or covered employee could satisfy notice requirements of insurance policy by giving notice to either independent agent or insurance company. Mississippi v. Richardson, 817 F.2d 1203 (5th Cir. 1987).

Where county purchased fidelity insurance from independent agent who in turn contacted insurance wholesaler that dealt directly with insurance company, independent agent was insurance company's "agent" under Mississippi law, as independent agent took or transmitted application to insurance company via insurance wholesaler and independent agent relayed premium charge quotation from insurance wholesaler to county, thus performing "act or thing in the making" of contract, such that independent agent advised county and was county's agent, and independent agent also acted "on behalf of" or "for" insurance company such that it was insurance company's agent under § 83-17-1, such that notice to independent agent constituted notice to insurance company. Mississippi v. Richardson, 817 F.2d 1203 (5th Cir. 1987).

A local insurance soliciting agency which arranged insurance on a fleet of tractors was the agent of the insurer and the agent of the insurer's general agent for purposes of a suit by the insured against the insurer alleging improper failure to defend against a claim. Smith Trucking, Inc. v. Cotton Belt Ins. Co., 556 F.2d 1297 (5th Cir. 1977).

In determining the status as an agent of an individual arranging insurance with an unauthorized insurer, § 83-17-1 was the appropriate section for determining agency where the sections listed in § 83-21-31 as particularly applicable to policies issued by unauthorized insurers did not refer to acts sufficient to constitute an agency relationship. Southeastern Fid. Ins. Co. v. Gann, 340 So. 2d 429 (Miss. 1976).

Where the local insurance agent, acting for the insurance company, not only advanced the premium to a general agent on the policy issued to a trucking company, but continued to make an effort to collect that company's check for the premium due on the policy, and, in fact, did pay the insurance company a portion of the premium when it was collected, the local agent acted for and as agent of the insurer. Soso Trucking, Inc. v. Central Ins. Agency, Inc., 236 So. 2d 398 (Miss. 1970).

One soliciting insurance on behalf of the insurer, and who also prepared the application for insurance and transmitted it to the insurer, was the insurer's general agent, whose knowledge and information acquired in taking the policy was also the knowledge and information of the insurer. World Ins. Co. v. Bethea, 230 Miss. 765, 93 So. 2d 624 (1957), appeal dismissed, 355 U.S. 181, 78 S. Ct. 262, 2 L. Ed. 2d 186 (1957).

Cashier of branch office of insurance company who was authorized to transmit to home office applications for benefits under policies issued by company in state, and to advise policyholders of rights under policies and of proof necessary to sustain their claims, held "agent" of company within statute defining agent, as regards company's liability for disability benefits. Reliance Life Ins. Co. v. Cassity, 173 Miss. 840, 163 So. 508 (1935).

Insurance company cannot escape effect of statute, declaring person delivering insurance policy insurer's agent, by allowing its sole agent to employ assistants to conduct business, including delivery of policies. Aetna Ins. Co. v. Lester, 170 Miss. 353, 154 So. 706 (1934).

Defendant's acts in relation to fire policy held to bring them within statutory definition of insurance agents, making them personally liable upon policy, where insurance companies were unauthorized to do business in state. Wilkinson v. Goza, 165 Miss. 38, 145 So. 91 (1932).

Insurer's agent who inspects risk, issues and delivers policy, and collects premium is "general agent" of insurer. St. Paul Fire & Marine Ins. Co. v. Loving, 163 Miss. 114, 140 So. 727 (1932).

Person acting under instructions of another in procuring insurance for deceased through insurer's district manager held not insurer's agent as regards premium paid. Mutual Life Ins. Co. v. Tabb, 49 F.2d 1019 (5th Cir. 1931).

An agent who delivers a policy and receives the premium is within the statute, and this is true whether agent was a soliciting or general agent. Big Creek Drug Co. v. Stuyvesant Ins. Co., 115 Miss. 333, 75 So. 768 (1917), error overruled, 115 Miss. 561, 76 So. 548 (1917).

3. Agents' powers, generally.

The general laws of agency apply to agency relationships in the insurance industry, and the powers possessed by agents of insurance companies are to be interpreted in accordance with such general laws. McPherson v. McLendon, 221 So. 2d 75 (Miss. 1969).

An insurance adjuster does not have authority to extend the coverage of the policy to an expressly excluded liability, but the insurance company is estopped to deny his authority to adjust a loss within such coverage. Canal Ins. Co. v. Howell, 248 Miss. 678, 160 So. 2d 218 (1964).

This section undertakes to designate as agent certain persons who in fact act for an insurance company in some particular, but it does not fix the scope of their authority as between the company and third persons, and certainly does not raise special agents, with limited authority, into general ones, possessing unlimited powers. Saucier v. Life & Cas. Ins. Co., 189 Miss. 693, 198 So. 625 (1940).

The words "as to all the duties and liabilities imposed by law" ex vi termini refer not to duties and liabilities that grow out of the contract of insurance, such duties and liabilities being determined by the provisions of the contract itself, but to duties and liabilities imposed on insurance companies and their agents by law outside and independent of the provisions of the contract of insurance. Saucier v. Life & Cas. Ins. Co., 189 Miss. 693, 198 So. 625 (1940); St. Paul Mercury & Indem. Co. v. Ritchie, 190 Miss. 8, 198 So. 741 (1940).

One to whom insurance company's agent intrusted delivery of fire policy was insurer's agent. Aetna Ins. Co. v. Lester, 170 Miss. 353, 154 So. 706 (1934).

The statute, while defining who is insurance agent, does not alter general law of agency. American Bankers' Ins. Co. v. Lee, 161 Miss. 85, 134 So. 836 (1931).

4. Agents' knowledge as imputable to insurer-generally.

Life insurer could not avoid policy because the application for insurance did not fully disclose information given to its soliciting agents. National Life & Accident Ins. Co. v. Miller, 484 So. 2d 329 (Miss. 1985), appeal dismissed, 486 U.S. 1027, 108 S. Ct. 2007, 100 L. Ed. 2d 596 (1988).

Where a local insurance agent, in the course of procuring the issuance by another agent of a collision insurance policy upon a motor truck, secured and transmitted to the issuing agent all necessary information relating to the ownership and description of the property to be insured, and later shared in that agent's commission, his knowledge relating to matters known to him prior to the issuance of the policy would be imputed to the company which insured the risk. American Fid. Fire Ins. Co. v. Hancock, 186 So. 2d 212 (Miss. 1966).

Issuance of renewal fire insurance policies by a general agent with knowledge of the vacancy and unoccupancy of the insured property waives the vacancy or unoccupancy clause. Travelers Fire Ins. Co. v. Bank of New Albany, 244 Miss. 788, 146 So. 2d 351 (1962).

An insurance agent who, being unable to issue a fire insurance policy in his own company, procures insurance to be written by the agent of another company, is pro hac vice the agent of the latter company, so as to make his knowledge of other insurance imputable to it. Bankers Fire & Marine Ins. Co. v. Dungan, 240 Miss. 691, 128 So. 2d 544 (1961).

Knowledge of general agent was also the knowledge of the insurer. World Ins. Co. v. Bethea, 230 Miss. 765, 93 So. 2d 624 (1957), appeal dismissed, 355 U.S. 181, 78 S. Ct. 262, 2 L. Ed. 2d 186 (1957).

Where insurer's defense to consolidated actions brought by an insured on two fire policies, which contained a clause that other insurance was prohibited unless the total amount of insurance was inserted on the first page of the policy, was that the insured had a third policy which was not mentioned in the first two policies, the knowledge of local agent who issued the policy would be imputed to the insurer. American Cent. Ins. Co. v. Meredith, 228 Miss. 402, 87 So. 2d 871 (1956).

Insurance company held estopped to deny liability where agent knew that cotton insured was stored in framed sheds and not in brick compartments as stated in the policy. Agricultural Ins. Co. v. Anderson, 120 Miss. 278, 82 So. 146 (1919); Saucier v. Life & Cas. Ins. Co., 189 Miss. 693, 198 So. 625 (1940).

Knowledge of insurance company's agent was binding on insurer. Aetna Ins. Co. v. Lester, 170 Miss. 353, 154 So. 706 (1934).

Knowledge of insurer's agent is knowledge of insurer. St. Paul Fire & Marine Ins. Co. v. Loving, 163 Miss. 114, 140 So. 727 (1932).

Under this provision, knowledge acquired by insurer's soliciting agent in course of employment is ordinarily imputed to insurer. Hartford Fire Ins. Co. v. Clark, 154 Miss. 418, 122 So. 551 (1929).

If this section was intended to make knowledge acquired by medical examiner for life company chargeable to insurer it is merely declaratory of common law. New York Life Ins. Co. v. Smith, 129 Miss. 544, 91 So. 456 (1922).

Insurer cannot avoid policy because total insurance exceeds amount fixed by policy where agent procuring policies had knowledge of the facts. Stewart v. Coleman & Co., 120 Miss. 28, 81 So. 653 (1919), error overruled, 82 So. 69 (Miss. 1919), modified, 82 So. 338 (Miss. 1919), superseded by statute on other grounds as stated in Mitchell v. Rawls, 493 So. 2d 361 (Miss. 1986).

Agent delivering policy and receiving premium with knowledge that insured did not and had not under prior policy maintained an iron safe as stipulated, held to bind company and estop it from effecting forfeiture of the policy. Big Creek Drug Co. v. Stuyvesant Ins. Co., 115 Miss. 333, 75 So. 768 (1917), suggestion of error overruled, 115 Miss. 561, 76 So. 548 (1917);

Saucier v. Life & Cas. Ins. Co., 189 Miss. 693, 198 So. 625 (1940).

5. —Notice to agent of claim or loss.

Under Mississippi law, notice of claim given to agent is imputed to insurance company, regardless of provisions in policy to the contrary. Mississippi v. Richardson, 817 F.2d 1203 (5th Cir. 1987).

Notice of claim given to independent insurance agency is not to be imputed to insurance company by virtue of § 83-17-1, where (1) in securing policy, agency had dealt with insurance wholesaler and not with company itself, (2) agency does not have agency agreement with company and does not negotiate claims for company or deal directly with its personnel, (3) agency has acted more as advisor to insured than as agent of company, having provided other insurance to insured and having often provided advice to it on insurance matters. State ex rel. King v. Richardson, 634 F. Supp. 133 (S.D. Miss. 1986), aff'd sub nom. State v. Richardson, 817 F.2d 1203 (5th Cir. 1987).

Verbal notice of loss by insured to insurance agent through whom insurer issued policy constituted verbal notice to the insurer, despite the agent's failure to give actual notice to the insurer until a later time. Hood v. Fireman's Fund Ins. Co., 412 F. Supp. 846 (S.D. Miss. 1976).

6. —Knowledge binding notwithstanding contrary provision in application or policy.

With regard to a claimant's request for life insurance benefits under a policy governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C.S. § 1001 et seq., which the claimant purchased to insure her putative common law spouse, an agent's alleged knowledge that the claimant and the spouse was not legally married could be attributed to the insurer under Miss. Code Ann. § 83-17-1 for purposes of determining whether the insurer and plan administrator waived the plan's spousal eligibility requirement by accepting premium payments. Price v. Metro. Life Ins. Co., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 68063 (N.D. Miss. Sept. 8, 2008).

Under Mississippi law, notice given to agent is imputed to insurance company, regardless of provisions in policy to the contrary. Mississippi v. Richardson, 817 F.2d 1203 (5th Cir. 1987).

Fire insurance company whose agent made out application and failed to write correcting applicant's answer to question held bound by answer notwithstanding contrary provision in application and policy. Home Ins. Co. v. Thornhill, 165 Miss. 787, 144 So. 861 (1932); Saucier v. Life & Cas. Ins. Co., 189 Miss. 693, 198 So. 625 (1940).

7. —Question of fact as to what agent knew.

In consolidated actions brought by an insured on two fire policies which contain a clause that other insurance is prohibited unless the total amount of the insurance was inserted on the first page of the policy, where the insurer's defense was that the insured had a third policy which was not mentioned in the first two policies, it was an issue of fact for the determination of the jury whether the local agent who issued the two policies knew of the existence of the third policy. American Cent. Ins. Co. v. Meredith, 228 Miss. 402, 87 So. 2d 871 (1956).

8. —Agent's exercise of discretion in determining insurability.

Insurance agent's knowledge of credit life insurance applicant's prior heart attack is imputable to insurer and agent's decision to extend insurance coverage to applicant binds insurer where agent is given no definite guidelines for determining who is or is not insurable party and it is agent's understanding, corroborated by superiors in company, that agent is to use own discretion in deciding who qualifies for insurance; insurance company which refuses to pay claim under such circumstances is subject to punitive damages. Southern United Life Ins. Co. v. Caves, 481 So. 2d 764, 55 A.L.R.4th 233 (Miss. 1985).

9. Agents' act or statements as binding insurer—generally.

The evidence was sufficient to support a jury finding that agents for a life insurer had the apparent authority to form an immediate binding contract with certain insureds where admissions were made by an executive and an agent of the insurer, there was a blatant failure by the insurer to provide "notice of restrictions upon [the agents'] authority" to avert misleading or fraudulent misrepresentations, and the insureds were not afforded an opportunity to become properly informed through inspection of sample policies, brochures, "or anything," and discover that the agents' offers "wrongfully" contravened unrevealed policy conditions. Andrew Jackson Life Ins. Co. v. Williams, 566 So. 2d 1172 (Miss. 1990).

A limitation upon the authority of a general insurance agent, having power to make contracts of insurance, would not relieve the insurer from liability on a policy issued by such agent in violation of the limitation, where the insured had neither actual nor constructive notice of such limitation, and the insurer had taken no step to give notice to the public that the agent's authority was so limited. McPherson v. McLendon, 221 So. 2d 75 (Miss. 1969).

Where a general agent used a form designed by the insurer for use as a memorandum of an existing policy and transformed it into a binder of insurance by the insertion of a typewritten statement at the top of the document, the binder was effective as insurance. Cummings v. New England Ins. Co., 266 F.2d 888 (5th Cir. 1959).

The words "as to all the duties and liabilities imposed by law," contained herein, were not effective to enlarge the authority of an insurance adjuster to cover medical and hospital expense in the settlement of a personal injury claim under an employer's liability policy in excess of a specific limitation thereon contained in the policy, in view of a provision therein against charge, waiver, alteration, or extension of any of the agreements, conditions or declarations contained in the policy except by specific officers of the insurance company. St. Paul Mercury & Indem. Co. v. Ritchie, 190 Miss. 8, 198 So. 741 (1940).

A mutual life and disability company, which has been converted from a fraternal society, was, under this section [Code 1942, § 5706], bound by the act of its agent in misleading the insured as to the extent of disability necessary to entitle him to file a claim therefor, since upon its conversion it ceased to be a fraternal society entitled to the immunity provided by Code of 1930, § 5234, [Code 1942, § 5748], applicable to fraternal societies. Columbian Mut. Life Ins. Co. v. Gipson, 185 Miss. 890, 189 So. 799 (1939).

Where insured, on requesting insurer's agent to supply forms for filing of claim for total disability, was informed that eligibility for such benefits depended on insured's being forever disabled, and insured, who expressed hope of recovery, abandoned effort to collect disability benefits, wife could recover such benefits after insured's death where it appeared that insured was totally disabled when he applied for application blanks for filing of claim. Reliance Life Ins. Co. v. Cassity, 173 Miss. 840, 163 So. 508 (1935).

One to whom insurance company's agent intrusted delivery of fire policy was insurer's agent, whose statements at time of delivery were binding on insurer. Aetna Ins. Co. v. Lester, 170 Miss. 353, 154 So. 706 (1934).

Life insurance agent's statement, contrary to policy, that insurer was liable from inception of disability and that insured would not lose anything because she had failed to make due proof sooner, held mere expressions of opinion without effect upon policy by virtue of this statute. Mutual Life Ins. Co. v. Hebron, 166 Miss. 145, 146 So. 445 (1933).

Agreement of agent to renew vacancy permit held to bind company and to entitle insured to recover for loss during time permit was to be renewed and while house was vacant. Sutherland v. Federal Ins. Co., 97 Miss. 345, 52 So. 689 (1910).

10. —Premiums.

Payment of premium to agent effects payment to insurance company. Barhonovich v. American Nat'l Ins. Co., 947 F.2d 775 (5th Cir. 1991).

In action by insured against insurer for negligence, breach of contract, and conversion, based on acts of insurance agent converting plaintiff's premiums, insurance company was not guilty of negligence in failing to credit plaintiff's account, failing to handle his policy properly, or allowing him to remain uninsured for over 2 years, where it did not authorize, consent, encourage or ratify agent's fraudulent activities, nor authorize agent to falsify premium documentation, divert plaintiff's premiums, or misrepresent to plaintiff that he was no longer required to pay premiums. Barhonovich v. American Nat'l Ins. Co., 947 F.2d 775 (5th Cir. 1991).

An insurance company cannot insist upon collecting premiums on an insurance policy and, at the same time, successfully contend that the insurance policy had been cancelled for nonpayment of premiums. Soso Trucking, Inc. v. Central Ins. Agency, Inc., 236 So. 2d 398 (Miss. 1970).

Where a check is accepted as payment for insurance premiums and not accepted for collection by an insurance agent, the transaction is equivalent to payment, and this is true although the check is not paid when first presented to the bank. Soso Trucking, Inc. v. Central Ins. Agency, Inc., 236 So. 2d 398 (Miss. 1970).

It has been accepted as a general rule of law that where credit has been given by the general agent of an insurer for the premiums on an insurance policy, the transaction is equivalent to payment. Soso Trucking, Inc. v. Central Ins. Agency, Inc., 236 So. 2d 398 (Miss. 1970).

Where the proof showed that the insured paid the premiums on a major medical policy to the agent from whom he purchased the policy, and he was at no time notified either by the agent or the insurer that his policy had lapsed because of failure to pay premiums or that the local agent's contract had been terminated by the insurer, the defense of nonpayment of premiums was not available to the insurer seeking to avoid payment of a claim under the policy. American Cas. Co. v. Whitehead, 206 So. 2d 838 (Miss. 1968).

An insurance adjuster does not have authority to extend the coverage of the policy to an expressly excluded liability, but the insurance company is estopped to deny his authority to adjust a loss within such coverage. Canal Ins. Co. v. Howell, 248 Miss. 678, 160 So. 2d 218 (1964).

This section does not raise a local insurance agent, with limited powers, to such an agent as had authority to deliver, and establish the company's liability for, a life insurance policy without payment of the initial premium in violation of the terms of the policy contract. Saucier v. Life & Cas. Ins. Co., 189 Miss. 693, 198 So. 625 (1940).

This provision does not make binding upon the insurer a soliciting agent's alleged extension of time for payment of annual installment of note executed for premiums due on five-year fire policy, which provided that insurer should not be liable for loss occurring while insured was in default. Aetna Ins. Co. v. Singleton, 174 Miss. 556, 164 So. 13 (1935).

11. —Waiver.

An agent had apparent authority to issue a credit life insurance policy in excess of the master policy limits, and therefore his actions in issuing such a policy were binding on the insurance company, where the insurance company furnished the agent with blank certificates of insurance bearing the insurance company logo, the agent regularly issued policies of credit life insurance through the insurance company using these forms, and the agent had previously issued policies in excess of the master policy limits on several occasions. Malta Life Ins. Co. v. Estate of Washington, 552 So. 2d 827 (Miss. 1989).

Insurance company was not bound by its agent informing individual and his wife that individual was insured where there was no indication of detrimental reliance on agent's statement by individual and his wife, thus failing to establish one of elements of apparent authority necessary under general law of agency. Ford v. Lamar Life Ins. Co., 513 So. 2d 880 (Miss. 1987).

Insurance agent's knowledge of credit life insurance applicant's prior heart attack is imputable to insurer and agent's decision to extend insurance coverage to applicant binds insurer where agent is given no definite guidelines for determining who is or is not insurable party and it is agent's understanding, corroborated by superiors in company, that agent is to use own discretion in deciding who qualifies for insurance; insurance company which refuses to pay claim under such circumstances is subject to punitive damages. Southern United Life Ins. Co. v. Caves, 481 So. 2d 764, 55 A.L.R.4th 233 (Miss. 1985).

Issuance of renewal fire insurance policies by a general agent, with knowledge of the vacancy and unoccupancy of the insured property, waives the vacancy or unoccupancy clause. Travelers Fire Ins. Co. v. Bank of New Albany, 244 Miss. 788, 146 So. 2d 351 (1962).

A local agent of an insurance company furnished with blank forms to be filled out, countersigned, and issued by him has all the powers of a general agent when issuing policies, and can waive any of the policy provisions. American Cent. Ins. Co. v. Meredith, 228 Miss. 402, 87 So. 2d 871 (1956); Liverpool & London & Globe Ins. Co. v. Delaney, 190 Miss. 404, 200 So. 440 (1941).

The agent who has authority to fill out, sign, and deliver an insurance policy, and especially for a foreign insurance company with whom the applicant for insurance has no dealings other than through such agent, has all the powers of a general agent of the company when issuing such policy and may waive any of their provisions. Camden Fire Ins. Ass'n v. Koch, 216 Miss. 576, 63 So. 2d 103 (1953).

There was a waiver of provisions in insurance policy that an assignment should not be valid except with the written consent of insurers, where the jury found on sufficient evidence that purchaser requested general agent of insurers to transfer insurance to him, and agent informed purchaser that insurance would be transferred, but insurance was never transferred and property was destroyed by fire without purchaser obtaining other insurance. Camden Fire Ins. Ass'n v. Koch, 216 Miss. 576, 63 So. 2d 103 (1953).

Where an agent made a mistake in writing a fire and windstorm insurance policy in that he failed to insert in the policy the correct amount of premium necessary for the coverage included in it, and the company failed to detect the error, and also it was not shown that there was any scheme fraudulent or otherwise for a rebate of a portion of the premium, the policies were not void. Queen Ins. Co. of Am. v. Delta Gin Co., 210 Miss. 167, 48 So. 2d 866 (1950).

If an insurance company's agent was advised of the existence of another insurance policy on the house insured, which was for the determination of the jury, the stipulation in the policy that it would be void if the house covered by it was or would become covered by another insurance policy was waived, by the agent's issuing the policy notwithstanding stipulations to the contrary therein. Liverpool & London & Globe Ins. Co. v. Delaney, 190 Miss. 404, 200 So. 440 (1941).

In Scottish Union & Nat. Ins. Co. v. Wylie (1915) 110 Miss 681, 70 So 835, it was held that an insurance agent might bind the insurer by a waiver of non-insurance and non-mortgage clauses in a policy. Scottish Union & Nat'l Ins. Co. v. Wylie, 110 Miss. 681, 70 So. 835 (1916).

RESEARCH REFERENCES

Practice References. Business Insurance Law and Practice Guide, (Matthew Bender).

Business Law Monographs, Volume IN2 — Casualty and Liability Insurance (Matthew Bender).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

ALR. Public regulation or control of insurance agents or brokers. 10 A.L.R.2d 950.

Fraud or misrepresentation by insured's agent after loss as within provision avoiding policy for fraud or attempted fraud of insured. 24 A.L.R.2d 1220.

Misrepresentation by one other than insurance agent as to coverage, exclusion, or legal effect of insurance policy, as actionable. 29 A.L.R.2d 213.

Insured's responsibility for false answers inserted by insurer's agent in application following correct answers by insured, or incorrect answers suggested by agent. 26 A.L.R.3d 6.

Insurer's tort liability for acts of adjuster seeking to obtain settlement or release. 39 A.L.R.3d 739.

Insurance agents or salesmen as within coverage of social security or unemployment compensation acts. 39 A.L.R.3d 872.

Liability of insurance broker or agent to insured for failure to procure insurance. 64 A.L.R.3d 398.

Liability of insurance agent or broker on ground of inadequacy of liability insurance coverage procured. 72 A.L.R.3d 704.

Liability of insurance agent or broker on ground of inadequacy of life, health, and accident insurance coverage procured. 72 A.L.R.3d 735.

Liability of insurance agent or broker on ground of inadequacy of property insurance coverage procured. 72 A.L.R.3d 747.

Activities of insurance adjusters as unauthorized practice of law. 29 A.L.R.4th 1156.

Necessity or permissibility of naming no-fault insurer as defendant where insured automobile owner or operator is not liable for economic losses under no-fault insurance law. 40 A.L.R.4th 858.

Liability of insurance agent or broker to insured for misrepresentation of cash surrender value or accumulated value benefits of life insurance policy. 44 A.L.R.4th 1030.

Liability of insurer, or insurance agent or adjuster, for infliction of emotional distress. 6 A.L.R.5th 297.

Liability of insurance agent or broker for placing insurance with insolvent carrier. 42 A.L.R.5th 199.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 170 et seq.

12A Am. Jur. Pl & Pr Forms (Rev), Fright, Shock, and Mental Disturbance, Form 44 (complaint, petition, or declaration-by widow-for damages resulting from intentional infliction of mental distress-threats and misrepresentations by insurance adjuster to force compromise of claim).

10 Am. Jur. Legal Forms 2d, Insurance §§ 149:73 et seq. (agency agreements).

23 Am. Jur. Proof of Facts 2d 527, Fraud of Insurer in Inducement or Execution of Contract.

31 Am. Jur. Proof of Facts 2d 323, Insurer's Breach of Covenant of Good Faith and Fair Dealing-First-Party Claims.

10 Am. Jur. Proof of Facts 3d 579, Insurance Agent's or Broker's Failure to Process Insurance.

CJS. 44 C.J.S., Insurance §§ 198, 199 et seq.

Law Reviews. 1978 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 97, March 1979.

1981 Mississippi Supreme Court Review: Insurance. 52 Miss. L. J. 445, June 1982.

Walter & Cory, The Circumvention of Mississippi's Prohibition of Direct Actions, 66 Miss L.J. 493, Spring, 1997.

§ 83-17-3. Personal liability.

An insurance agent shall be personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for or in behalf of any company not authorized to do business in the state.

SOURCES: Codes, 1906, § 2616; Hemingway's 1917, § 5079; 1930, § 5197; 1942, § 5707.

Cross References — Liability of agent for evaluation of property for fire insurance, see § 83-13-5.

Liability of agent for issuing policy under assessment plan, see § 83-25-3.

Penalty for acting as agent of company not complying with law, see § 97-23-31.

JUDICIAL DECISIONS

1. In general.

Defendant insurance agent's was personally liable as a matter of law under Miss. Code §§ 83-17-3, 83-17-103 (repealed Jan. 1, 2002), for insurance policies which he "helped place" with a company that was not licensed to sell insurance within the state, where documented communication that reflects the agent was involved in passing information, including an insurance proposal, between plaintiffs and the non-licensed company that resulted in a policy being issued. Home Health Care Affiliates of Miss., Inc. v. N. Am. Indem. N.V., 299 F. Supp. 2d 645 (N.D. Miss. 2004).

Defendant insurance agent's motion for summary judgment was denied where the statutory language of Miss. Code §§ 83-17-3, 83-17-103 (repealed Jan. 1, 2002), assigned him liability for plaintiffs' renewal policy even though he argued was not directly involved in the renewal. Home Health Care Affiliates of Miss., Inc. v. N. Am. Indem. N.V., 299 F. Supp. 2d 645 (N.D. Miss. 2004).

Agreement between an employer and an insurance agent for group health insurance coverage was regulated by state insurance laws and not preempted by ERISA; the agent was liable under Miss. Code Ann. § 83-17-3 for approved, unpaid claims because the insurer was not authorized to do business in the state. Home Healthcare Affiliates of Miss., Inc. v. Am. Heartland Health Adm'rs, Inc., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 25204 (N.D. Miss. Mar. 21, 2003).

Statute making agent personally liable if agent writes coverage for company not authorized to do business in state did not apply to policy issued by automobile insurer that was authorized for personal lines, not commercial business; statute says nothing about writing coverage insurance company is not authorized to provide. Dixie Ins. Co. v. Mooneyhan, 684 So. 2d 574 (Miss. 1996).

This statute must be considered along with Code 1972 § 83-21-27, which permits specially licensed agents to place insurance with non-admitted companies without assuming personal liability. Goff v. Dixon, 311 So. 2d 642 (Miss. 1975).

Statute imposing personal liability, on policy, on agent of insurance company unauthorized to do business in state held not in abridgment of privilege of contract. Wilkinson v. Goza, 165 Miss. 38, 145 So. 91 (1932).

Statute making insurance agent, of company unauthorized to do business in state, personally liable on policy held remedial, not penal, and insured's suit thereunder was not within one-year limitation. Wilkinson v. Goza, 165 Miss. 38, 145 So. 91 (1932).

Defendants' acts in relation to fire policy held to bring them within statutory definition of insurance agents, making them personally liable upon policy, where insurance companies were unauthorized to do business in state. Wilkinson v. Goza, 165 Miss. 38, 145 So. 91 (1932).

RESEARCH REFERENCES

ALR. Liability of insurance broker or agent to insured for failure to procure insurance. 64 A.L.R.3d 398.

Liability of insurance agent or broker on ground of inadequacy of liability insurance coverage procured. 72 A.L.R.3d 704.

Liability of insurance agent or broker on ground of inadequacy of life, health, and accident insurance coverage procured. 72 A.L.R.3d 735.

Liability of insurance agent or broker on ground of inadequacy of property insurance coverage procured. 72 A.L.R.3d 747.

Liability of insurance agent or broker to insured for misrepresentation of cash surrender value or accumulated value benefits of life insurance policy. 44 A.L.R.4th 1030.

Liability of independent or public insurance adjuster to insured for conduct in adjusting claim. 50 A.L.R.4th 900.

Necessity of expert testimony to show standard of care in negligence action against agent or broker. 52 A.L.R.4th 1232.

Liability of tortfeasor's insurance agent or broker to injured party for failure to procure or maintain liability insurance. 72 A.L.R.4th 1095.

Liability of insurance agent or broker for placing insurance with insolvent carrier. 42 A.L.R.5th 199.

Am Jur. 14A Am. Jur. Pl & Pr Forms (Rev), Insurance, Form 386.1 (complaint, petition or declaration-allegation-malice or fraud of insurer).

10 Am. Jur. Proof of Facts 3d 579, Insurance Agent's or Broker's Failure to Process Insurance.

CJS. 44 C.J.S., Insurance § 251.

§ 83-17-5. Agent certificate; notification of nonrenewal required.

Every agent of any insurance company, fraternal order or association authorized to do business in this state shall be required to obtain from the Commissioner of Insurance a certificate under the seal of his office showing that the company for which he or she is licensed to do business in this state, and that he or she is an agent of said company and duly authorized to do business for it. Such certificate shall remain valid as long as the insurance company, fraternal order or association pays to the commissioner an annual certificate fee to continue the authorization. The insurance company, fraternal order or association must notify the agent within thirty (30) days if the authority is nonrenewed or cancelled.

SOURCES: Codes, 1906, § 2627; Hemingway's 1917, § 5093; 1930, § 5198; 1942, § 5708; Laws, 1988, ch. 526, § 5; Laws, 1990, ch. 355, § 2; Laws, 2003, ch. 419, § 1; Laws, 2006, ch. 314, § 1, eff from and after July 1, 2006.

Editor's Note — Section 13 of ch. 526, Laws, 1988, provides as follows:

"SECTION 13. The commissioner may, after notice and hearing, issue rules and regulations that he deems necessary to effectuate the purposes of this act or to eliminate devices or plans designed to avoid or render ineffective the provisions of this act. The commissioner may require such information as is reasonably necessary for the enforcement of this act. All rules and regulations adopted and promulgated pursuant to this act shall be subject to the provisions of the Mississippi Administrative Procedures Law as provided in Section 25-43-1 et seq. [now 25-43-1.101 et seq.], Mississippi Code of 1972."

Cross References — Privilege taxes on insurance agents, see §§ 27-15-85 et seq.

Authority to issue continuous agent certificates, see § 83-15-3.

Use of facsimile countersignatures when authorization is given by agent in writing to insurer for which agent is certified to do business pursuant to this section, see § 83-17-21.

Procedure for organizing insurance company, see § 83-19-11.

Delivery of insurance policies through resident agents, see § 83-31-37.

Privilege tax for continuous agent certificate, see § 83-37-21.

JUDICIAL DECISIONS

1. In general.

Insurer cannot defeat recovery on policy on ground that agent failed to comply with this section [Code 1942, § 5708]. Caledonian Fire Ins. Co. v. Shepherd, 111 Miss. 175, 71 So. 314 (1916).

RESEARCH REFERENCES

ALR. Public regulation or control of insurance agents or brokers. 10 A.L.R.2d 950.

Am Jur. 43 Am. Jur. 2d, Insurance § 75.

CJS. 44 C.J.S., Insurance § 138.

§ 83-17-7. Commission to unauthorized agent unlawful.

It shall be unlawful for any insurance company or any insurance agent to pay, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies written on risks in this state to any person, agent, firm or corporation not duly licensed as an insurance agent in this state, except that property and other risks of nonresident persons, and of foreign corporations not qualified in this state, may be insured by brokers or other agents duly licensed in other states.

It shall be lawful, however, for an insurance company or any insurance agent to pay, directly or indirectly, to the surviving spouse or heirs of a deceased licensed insurance agent in this state any commissions or other valuable consideration to which the deceased agent would be entitled, whether such surviving spouse or heir is or is not a licensed agent.

It shall be lawful for an insurance agent, agency or affiliate to pay a referral fee to any unlicensed employee of the agent, agency or affiliate when the employee refers a prospective insured to the licensed agent or agency. The referral fee shall be a one-time nominal fee of a fixed dollar amount for each referral customer. The payment of any referral fee shall not depend on whether the referral results in a sale of any insurance products. Furthermore, the referral fee shall not be based on a percentage of any premiums or commissions collected by the licensed agent. The referral fee shall not be paid, either directly or indirectly, to the prospective insured.

The Commissioner of Insurance may promulgate rules and regulations necessary to carry out the provisions of this section.

SOURCES: Codes, 1942, § 5710; Laws, 1938, ch. 194; Laws, 1975, ch. 372; Laws, 1999, ch. 474, § 1; Laws, 2001, ch. 433, § 3; Laws, 2006, ch. 315, § 1; Laws, 2010, ch. 419, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment deleted the last paragraph which was the repealer for the section.

Cross References — Agents for foreign insurance company, see § 83-21-7.

Agents for reciprocal insurance contracts, see § 83-33-3.

JUDICIAL DECISIONS

1. In general.

Payment of dividends from distributable earnings by a corporate agency, even though such earnings might derive from commissions paid to the agency, would not be in violation of this section. Johnson & Higgins, Inc. v. Commissioner of Ins., 321 So. 2d 281 (Miss. 1975).

RESEARCH REFERENCES

ALR. Insurance agent's right to commissions on renewal premiums. 36 A.L.R.3d 958.

Am Jur. 43 Am. Jur. 2d, Insurance § 200.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance, Form No. 101 (complaint, petition, or declaration-breach of contract between brokers to share commission on sale of insurance policy and to assign right to renewal commissions).

CJS. 44 C.J.S., Insurance § 138.

§§ 83-17-9, 83-17-11. Repealed.

Repealed by Laws, 2001, ch. 510, § 34, eff from and after January 1, 2002.

§ 83-17-9. [Codes, 1942, § 5711; Laws, 1938, ch. 194.]

§ 83-17-11. [Codes, 1942, § 5712; Laws, 1938, ch. 194; Laws, 2000, ch. 417, § 1.]

Editor's Note — Former § 83-17-9 was entitled "Agents of other states."

Former § 83-17-11 was entitled "Penalty for paying unauthorized agent."

§ 83-17-13. Penalty for signing blank policy.

It shall be unlawful for any agent of a fire insurance company, or of any other insurance company which is required to have its policies signed by a resident agent, to sign any blank policy of insurance. Upon satisfactory proof that any agent has violated the provisions of this section, the commissioner shall revoke such agent's license for all companies for not less than three (3) nor more than six (6) months for the first offense, and for one (1) year for the second offense.

SOURCES: Codes, 1906, § 2654; Hemingway's 1917, § 5120; 1930, § 5200; 1942, § 5713; Laws, 1938, ch. 194.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 77.

CJS. 44 C.J.S., Insurance § 138.

§§ 83-17-15, 83-17-17. Repealed.

Repealed by Laws, 2001, ch. 510, § 34, eff from and after January 1, 2002.

§ 83-17-15. [Codes, 1942, § 5714; Laws, 1938, ch. 194.]

§ 83-17-17. [Codes, 1906, § 2657; Hemingway's 1917, § 5123; Laws, 1930, § 5203; Laws, 1942, § 5717; Laws, 2001, ch. 510, § 34.]

Editor's Note — Former § 83-17-15 was entitled "Application of statute."

Former § 83-17-17 was entitled "Penalty for acting as adjuster without license."

§ 83-17-19. Penalty for soliciting without license.

Every person who, either as principal or agent or pretending to be such, shall solicit, examine, or inspect any risk, or shall examine into, adjust, or aid in adjusting any loss, or shall receive, collect, or transmit any premiums of insurance, or shall do any other act in the soliciting, making, or executing of any contract of insurance of any kind otherwise than this chapter permits shall be deemed guilty of a misdemeanor and, on conviction, shall pay a fine of not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00), or be imprisoned not less than one (1) nor more than two (2) years, or both, in the discretion of the court.

SOURCES: Codes, 1906, § 2658; Hemingway's 1917, § 5124; 1930, § 5204; 1942, § 5718.

Cross References — Certificate of authority for insurance agent, see § 83-17-5.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Public regulation or control of insurance agents or brokers. 10 A.L.R.2d 950.

Recovery back of money paid to unlicensed person required by law to have occupation or business license or permit to make contract. 74 A.L.R.3d 637.

CJS. 44 C.J.S., Insurance § 138.

§ 83-17-21. Policies to be written through licensed agents.

No fire, fire marine, accident, health, employers' liability, steam boiler, plate glass, fidelity, surety, burglary, or other insurance company except life insurance companies, not incorporated under the laws of this state authorized to transact business herein shall make, write, place, or cause to be made, written, or placed any policy, duplicate policy, or contract of insurance of any kind or character or any general or floating policy upon persons or property in this state, except after the risk has been approved, in writing, by an agent, regularly commissioned and licensed to transact insurance business herein, who shall countersign all policies or contracts of insurance so issued. The provisions of this section shall not apply to individual firms and corporations indemnifying themselves through reciprocal contracts, and not employing local agents. No provision of this section is intended, or shall be so intended, as to direct insurance covering the rolling stock of railroad corporations, or property in transit while in the possession and custody of railroad corporations or other common carriers. The written approval and countersignature of licensed agents may be in facsimile when used solely in connection with personal accident insurance covering travel, issued through the medium of policy dispensing machines; however, land travel insurance so issued may not be issued for a period longer than seven (7) days from the date of issue. The written approval and countersignature of licensed agents may also be in facsimile when authorization is given by the agent in writing to an insurer for which the agent is certified to do business pursuant to Section 83-17-5. The use of facsimile countersignatures shall not modify any of the other requirements of this section. Any authorization for a facsimile countersignature may be canceled by the agent in writing and is automatically canceled upon the death, termination or nonrenewal of the agent.

SOURCES: Codes, Hemingway's 1917, § 5147; 1930, § 5205; 1942, § 5719; Laws, 1916, ch. 205; Laws, 1948, ch. 350, § 1; Laws, 1962, ch. 465; Laws, 1970, ch. 452, § 1; Laws, 1991, ch. 393, § 1; Laws, 1999, ch. 344, § 1, eff from and after July 1, 1999.

Cross References — Agents for reciprocal insurance contracts, see § 83-33-3.

Comparable Laws from other States — Georgia Code Annotated, § 33-23-16. Louisiana Revised Statutes Annotated, § 22:982.

JUDICIAL DECISIONS

1. In general.

This section deals specifically with insurance companies not incorporated under the laws of this state, and was inapplicable where the applicant for a license to operate as an incorporated agency had already been incorporated under the statutes of this state. Johnson & Higgins, Inc. v. Commissioner of Ins., 321 So. 2d 281 (Miss. 1975).

RESEARCH REFERENCES

ALR. Public regulation or control of insurance agents or brokers. 10 A.L.R.2d 950.

Am Jur. 43 Am. Jur. 2d, Insurance § 89.

CJS. 44 C.J.S., Insurance § 138.

§ 83-17-23. Repealed.

Repealed by Laws, 2001, ch. 510, § 34, eff from and after January 1, 2002.

[Codes, 1906, § 2653; Hemingway's 1917, § 5119; Laws, 1930, § 5206; Laws, 1942, § 5720.]

Editor's Note — Former § 83-17-23 was entitled "Foreign companies to operate through resident agents."

Cross References — Agents for nonadmitted insurers, see §§ 83-21-17 et seq.

§ 83-17-25. Duration of privilege licenses.

No certificate of authority shall be issued to any agent who has not previously obtained from the commissioner a privilege license to act as an insurance agent; provided that agents or organizers of fraternal orders shall not be required to have such privilege license.

The privilege licenses and filing fees required of life insurance companies, health and accident insurance companies, hospital insurance companies and fraternal insurance companies, shall continue for the next ensuing twelve (12) months after January 1 of each year.

The privilege licenses and filing fees required of fire, casualty, liability, fidelity, surety, guaranty, inland marine, plate glass and title insurance companies shall continue for the next ensuing twelve (12) months after June 1 of each year.

The privilege license of an individual to act as an insurance producer, limited lines producer, limited lines credit insurance producer, supervising general agent or managing general agent shall continue from the date of issuance of original licenses or from the expiration date for existing licenses until the last day of the month of the licensee's birthday in the second year following issuance or renewal of the license, with a minimum term of thirteen (13) months.

The privilege license of a business entity to act as insurance producer, limited lines producer, limited lines credit insurance producer, supervising general agent or managing general agent shall continue from the date of issuance until May 31 in the second year following issuance or renewal of the license, with a minimum term of thirteen (13) months.

SOURCES: Codes, 1906, § 2633; Hemingway's 1917, § 5099; 1930, § 5207; 1942, § 5721; Laws, 1956, ch. 340; Laws, 1995, ch. 315, § 2; Laws, 2009, ch. 448, § 6, eff from and after Nov. 1, 2009.

Amendment Notes — The 2009 amendment, effective November 1, 2009, deleted the former last sentence of the first paragraph which read: "The privilege license required of an insurance agent shall continue for the next ensuing twelve (12) months after June 1 of each year"; deleted "and the agents thereof" following "fraternal insurance companies" in the second paragraph; and added the last two paragraphs.

Cross References — Privilege taxes on insurance agents, see §§ 27-15-85 et seq.

Renewal of privilege licenses granted to supervising general agents, see § 27-15-89.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 75.

CJS. 44 C.J.S., Insurance § 138.

§§ 83-17-27 through 83-17-35. Repealed.

Repealed by Laws, 2001, ch. 510, § 34, eff from and after January 1, 2002.

§ 83-17-27. [Codes, 1942, § 5630.7; Laws, 1966, ch. 529, §§ 1-4.]
§ 83-17-29. [Codes, 1942, § 5723-11; Laws, 1962, ch. 469, § 1.]
§ 83-17-31. [Codes, 1942, § 5723-12; Laws, 1962, ch. 469, § 2.]
§ 83-17-33. [Codes, 1942, § 5723-13; Laws, 1962, ch. 469, § 3.]
§ 83-17-35. [Codes, 1942, § 5723-14; Laws, 1962, ch. 469, § 4.]

Editor's Note — Former § 83-17-27 was entitled "Publication of agents directory."
Former § 83-17-29 was entitled "Unauthorized counselling and advising prohibited."
Former § 83-17-31 was entitled "Notice and hearing."
Former § 83-17-33 was entitled "Penalties for unauthorized counselling."
Former § 83-17-35 was entitled "Appeals."

§ 83-17-37. Expiration of license; application for renewal.

(1) Each license issued to a producer shall expire on the mandated renewal date following the date of issue, unless prior thereto it is revoked or suspended by the commissioner.

(2) Each producer shall file an application for renewal of license on the form and in the manner prescribed by the commissioner for such purpose. Upon the filing of such application for renewal of license and the payment of the required fees, the current license shall continue to be in force until the renewal license is issued by the commissioner or until the commissioner has refused for cause to issue such renewal license, as provided in Section 83-17-71, and has given notice of such refusal in writing to the producer.

SOURCES: Laws, 2001, ch. 510, § 21, eff from and after Jan. 1, 2002.

§ 83-17-39. Examination of applicants; classification of applicants; textbooks and learning materials.

(1) Each applicant for a license to act as a producer within this state shall submit to a personal written examination to determine his competence to act as a producer and his familiarity with the pertinent provisions of the laws of this state, and shall pass the same to the satisfaction of the commissioner; except that no such written examination shall be required of:

(a) An applicant for a renewal license unless the commissioner determines that such examination is necessary to establish the competency of the applicant, or unless a license had not been effective as to such applicant within one (1) year preceding the date of filing the application;

(b) An applicant who is a ticket-selling agent of a railroad or steamship company, carrier by air, or public bus carrier who shall act as a producer or solicitor in the sale of accident insurance tickets to individuals;

(c) An applicant who shall be licensed to act only as a producer with respect to life, health and accident insurance on borrowers or debtors commonly known as credit life, health and accident insurance;

(d) In the discretion of the commissioner, an applicant whose license to do business or act as a producer in this state was suspended less than one (1) year prior to the date of application;

(e) An applicant who is an agent of a fraternal benefit society exclusively;

(f) An applicant who is exempt from examination under the provisions of Section 83-17-67; and

(g) An applicant who shall be licensed to act only as a producer with respect to property insurance on borrowers or debtors commonly known as credit property insurance.

(2) The commissioner may establish rules and regulations with respect to the classification of applicants according to the type of insurance contracts to be effected by them if licensed as producers, and with respect to the scope, type and conduct of written examinations to be given pursuant to this section, and

the times and places within this state for the holding of such examinations. Such rules and regulations, if established, shall classify applicants for purposes of this section as follows:

(a) Those desiring to write life insurance;

(b) Those desiring to write accident and health insurance, other than industrial accident and health insurance;

(c) Those desiring to write industrial accident and health insurance;

(d) Those desiring to write any combination of two (2) or more of the above classifications; and

(e) Those of such other classification as, in the opinion of the commissioner, are necessary or appropriate.

Examination shall be prepared and given in those subjects only which pertain to the classification or classifications which the applicant desires to write, and no applicant shall be required to take an examination on a subject or subjects pertaining to any other classification.

The rules and regulations of the commissioner, if established, shall designate textbooks, manuals and other materials to be studied by applicants in preparation for examination in each classification designated by the commissioner pursuant to this section. Such textbooks, manuals or other materials may consist of matter available to applicants by purchase from the publisher, or may consist of matter prepared at the direction of the commissioner and distributed to applicants upon request therefor and payment of the reasonable cost thereof. If textbooks, manuals or other materials shall have been designated or prepared by the commissioner pursuant to this section, all examination questions shall be prepared from the contents of such textbooks, manuals or other materials.

SOURCES: Laws, 2001, ch. 510, § 22; Laws, 2006, ch. 318, § 1, eff from and after passage (approved Mar. 1, 2006.)

§ 83-17-41. Licensing by type or kind of insurance; sanctions for selling type or kind of insurance for which not properly licensed.

The commissioner may, from time to time, make reasonable groupings into type, types or kinds of insurance that may be lawfully written in this state, for the purpose of prescribing reasonable written examinations for producer and solicitor licenses for each group respectively, and for the issuance of limited licenses. Any such licensed producer or solicitor who shall attempt to write any type of business or seek a brokerage commission on a type of business for which he is not properly licensed and authorized shall, after investigation of all circumstances and proper notice of hearing, be subject to hearing for revocation or suspension of the license.

SOURCES: Laws, 2001, ch. 510, § 23, eff from and after Jan. 1, 2002.

§ 83-17-43. Repealed.

Repealed by Laws of 2009, ch. 448, § 17, effective November 1, 2009. [Laws, 2001, ch. 510, § 24, eff from and after Jan. 1, 2002.]

Editor's Note — Former § 83-17-43 required the filing of a Certificate of Appointment.

§ 83-17-45. Prohibited acts; liability.

(1) No producer or other persons shall, within this state, solicit, procure, receive or forward applications for insurance or annuities, or issue or deliver policies for, or in any manner secure, help, or aid in the placing of any contract of insurance or annuity for any person other than himself, directly or indirectly, with any insurer not authorized to do business in this state.

(2) Any producer or any other person who violates the provisions of this section shall be liable for the full amount of any loss sustained on any contract of life, health or accident insurance or annuity made by or through him, directly or indirectly, with any insurer not authorized to do business in this state and, in addition, for any premium taxes which may become due under any law of this state by reason of such contract.

SOURCES: Laws, 2001, ch. 510, § 25, eff from and after Jan. 1, 2002.

§ 83-17-47. Commissioner's subpoena power.

The Commissioner of Insurance shall have the power to administer oaths and affirmations, issue subpoenas and order the attendance and testimony of witnesses and the production of papers, books and documents. Upon the failure of any person to comply with any subpoena or order issued under the authority of this section, the Commissioner of Insurance may invoke the aid of any court of the state of general jurisdiction. The court thereupon may order such person to comply with the requirements of the subpoena or order to give evidence touching the matter in question. Failure to obey the order of the court may be punished by the court as a contempt thereof.

SOURCES: Laws, 2001, ch. 510, § 26, eff from and after Jan. 1, 2002.

ARTICLE 2.

LICENSING OF INSURANCE PRODUCERS.

SEC.

83-17-51. Purpose and scope of article.
83-17-53. Definitions.
83-17-55. License required to sell, solicit or negotiate insurance; requirements for issuing license to partnership.
83-17-57. Exemptions from licensing requirement.
83-17-59. Examination.
83-17-61. Application requirements.

83-17-63. Qualification for license in certain lines of authority; license to remain in effect absent revocation, suspension, or failure to pay annual fee; reinstatement and renewal; waiver of renewal requirements due to extenuating circumstances; information to be included on license; change of address.
83-17-65. Nonresident licenses.
83-17-67. Individuals licensed in another state; exemption from prelicensing education or examination; 90-day application deadline.
83-17-69. Temporary license.
83-17-71. Violations; penalties; judicial review.
83-17-73. Licensing required before individual may accept commission for selling.
83-17-75. Appointment of producer as agent of insurer.
83-17-77. Notification of termination of insurance business relationship; termination procedure; immunity from civil liability absent actual malice; confidential and privileged information.
83-17-79. Reciprocity.
83-17-81. Producer to report to commissioner any administrative or criminal action initiated against producer.
83-17-83. Appellate review.
83-17-85. Inquisitorial and subpoena power of commissioner.
83-17-87. Regulations.
83-17-89. Severability.

§ 83-17-51. Purpose and scope of article.

The purpose of this article is to provide the qualifications and procedures required for the licensing of insurance producers. This article does not apply to excess and surplus lines agents and brokers licensed under Sections 83-21-17 through 83-21-31 except as provided in Sections 83-17-65 and 83-17-79(2), or to domestic title insurance companies and their agents licensed under Sections 83-15-1 through 83-15-11, except as provided in Section 83-17-75.

SOURCES: Laws, 2001, ch. 510, § 1, eff from and after Jan. 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference. The reference to "83-17-77(e)" was changed to "83-17-79(2)." The Joint Committee ratified the correction at its June 3, 2003, meeting.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-17-53. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

(b) "Commissioner" means the Commissioner of Insurance.

(c) "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.

(d) "Insurance" means any of the lines of authority in Section 83-19-1.

(e) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

(f) "Insurer" means that as defined in Section 83-6-1.

(g) "License" means a document issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier.

(h) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (gap) insurance and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

(i) "Limited line credit insurance producer" means a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group or individual policy.

(j) "Limited lines insurance" means those lines of insurance defined in Section 83-19-1, Class 1(b), (e), (p) and (q) and Section 83-19-1, Class 2(d), Section 83-17-63 (1) (h), (i), (j), (k) or any other line of insurance that the commissioner deems necessary to recognize for the purposes of complying with Section 83-17-65(5).

(k) "Limited lines producer" means a person authorized by the commissioner to sell, solicit or negotiate limited lines insurance.

(*l*) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(m) "Person" means an individual or a business entity.

(n) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(o) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(p) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

(q) "Uniform business entity application" means the current version of the NAIC uniform business entity application for resident and nonresident business entities.

(r) "Uniform application" means the current version of the NAIC uniform application for resident and nonresident producer licensing.

SOURCES: Laws, 2001, ch. 510, § 2; Laws, 2009, ch. 448, § 7, eff from and after Nov. 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference. The reference in (j) to "Section 8(5) of this act" was changed to "Section 83-17-65(5)." The Joint Committee ratified the correction at its June 3, 2003, meeting.

Amendment Notes — The 2009 amendment, effective November 1, 2009, rewrote (j).

§ 83-17-55. License required to sell, solicit or negotiate insurance; requirements for issuing license to partnership.

(1) A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.

(2) No license shall be issued to a partnership unless all the partners thereof satisfy the same requirements in every respect for an individual producer provided for in this article.

SOURCES: Laws, 2001, ch. 510, § 3, eff from and after Jan. 1, 2002.

§ 83-17-57. Exemptions from licensing requirement.

(1) Nothing in this article shall be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries or affiliates.

(2) A license as an insurance producer shall not be required of the following:

(a) An officer, director or employee of an insurer or of an insurance producer, if the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state and:

(i) The officer, director or employee's activities are executive, administrative, managerial, clerical or a combination of these and are only indirectly related to the sale, solicitation or negotiation of insurance; or

(ii) The officer, director or employee's function relates to underwriting, loss control or inspection of insurance; or

(iii) The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

(b) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance or for the purpose of enrolling individuals under plans or issuing certificates under plans or otherwise assisting in administering plans; or who performs administrative services related to mass marketed property and casualty insurance where no commission is paid to the person for the service;

(c) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, directors or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(d) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risk or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

(e) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, if the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;

(f) A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one (1) state insured under that contract, if that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or

(g) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer if the employee does not sell or solicit insurance or receive a commission.

SOURCES: Laws, 2001, ch. 510, § 4, eff from and after Jan. 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence of (2)(c). The word "officers" was substituted for "officer" and the word "directors" was substituted for "director." The Joint Committee ratified the correction at its August 5, 2008, meeting.

§ 83-17-59. Examination.

(1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt under Section 83-17-67 or Section 83-17-39. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.

(2) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting a nonrefundable examination fee.

(3) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the commissioner.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

SOURCES: Laws, 2001, ch. 510, § 5, eff from and after Jan. 1, 2002.

§ 83-17-61. Application requirements.

(1) A person applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

(a) Is at least eighteen (18) years of age;

(b) Has not committed any act that is a ground for denial, suspension or revocation set forth in Section 83-17-71;

(c) Where required by the commissioner, has completed a prelicensing course of study for the lines of authority for which the person has applied;

(d) Has paid the fees set forth in Section 27-15-87; and

(e) Has successfully passed the examinations for the liens of authority for which the person has applied.

(2) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:

(a) The business entity has paid the fees set forth in Section 27-15-85; and

(b) The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.

(3) The commissioner may require any documents reasonably necessary to verify the information contained in an application.

(4) Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide to each individual whose duties include selling, soliciting or negotiating limited line credit insurance a program of instruction that may be approved by the commissioner.

SOURCES: Laws, 2001, ch. 510, § 6; Laws, 2009, ch. 448, § 19, eff from and after Nov. 1, 2009.

Amendment Notes — The 2009 amendment, effective November 1, 2009, deleted "and 27-15-93" following "27-15-87" in (1)(d) and (2)(a).

§ 83-17-63. Qualification for license in certain lines of authority; license to remain in effect absent revocation, suspension, or failure to pay annual fee; reinstatement and renewal; waiver of renewal requirements due to extenuating circumstances; information to be included on license; change of address.

(1) Unless denied licensure under Section 83-17-71, persons who have met the requirements of Sections 83-17-59 and 83-17-61, shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(a) Life: insurance coverage on human lives including benefits of endowment and annuities and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

(b) Accident and health or sickness: insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income.

(c) Property: insurance coverage for the direct or consequential loss or damage to property of every kind.

(d) Casualty: insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property.

(e) Variable life and variable annuity products: insurance coverage provided under variable life insurance contracts and variable annuities.

(f) Personal lines: property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

(g) Credit: limited line credit insurance.

(h) Car rental: limited line insurance offered, sold or solicited in connection with and incidental to the rental of rental cars, whether at the rental office or preselection of coverage in master, corporate or individual agreements that is nontransferrable, applies only to the rental car that is subject of the rental agreement and is limited to the following kinds of insurance:

(i) Personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

(ii) Liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;

(iii) Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period;

(iv) Roadside assistance and emergency sickness protection insurance; or

(v) Any other coverage designated by the Commissioner of Insurance.

(i) Crop insurance: limited line insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions or perils provided by the private insurance market, or that is subsidized by the Federal Crop Insurance Corporation, including Multi-Peril Crop Insurance.

(j) Surety: limited line insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust. For purpose of limited line licensing, surety does not include Surety Bail Bonds.

(k) Travel: limited line insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier.

(*l*) Any other line of insurance permitted under state laws or regulations.

(2) An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in Section 27-15-87 is paid and education requirements for resident individual producers are met by the due date.

(3) An individual insurance producer who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. The penalty for such late renewal shall be in compliance with Section 27-15-215.

(4) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstances, including, but not limited to, a long-term medical disability may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(5) The license shall contain the licensee's name, address, personal identification number and the date of issuance, the lines of authority, the expiration date and any other information the commissioner deems necessary.

(6) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty (30) days of the change. Failure to timely inform the commissioner of a change in legal name or address shall result in a penalty under Section 83-17-71.

(7) In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the

National Association of Insurance Commissioner s (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the commissioner and the nongovernmental entity may deem appropriate.

SOURCES: Laws, 2001, ch. 510, § 7; Laws, 2002, ch. 322, § 1; Laws, 2009, ch. 448, § 8, eff from and after Nov. 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (1)(h) by substituting "whether at the rental office or preselection of coverage" for "whether at the rental office of preselection of coverage." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Amendment Notes — The 2009 amendment, effective November 1, 2009, in (1), added (h) through (k), and redesignated former (h) as present (*l*); deleted "and 27-15-93" following "Section 27-15-87" in (2); and made a minor stylistic change.

Cross References — Penalty for failure to procure license, see § 27-15-215.

RESEARCH REFERENCES

Practice References. Business Law Monographs, Volume IN2 — Casualty and Liability Insurance (Matthew Bender).

§ 83-17-65. Nonresident licenses.

(1) Unless denied licensure pursuant to Section 83-17-71, a nonresident person shall receive a nonresident producer license if:

(a) The person is currently licensed as a resident and is in good standing in his or her home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by Section 27-15-87;

(c) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to his or her home state, or a completed uniform application; and

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis.

(2) The commissioner may verify the producer's licensing status through the producer database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(3) A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. No fee or license application is required.

(4) Notwithstanding any other provision of this article, a person licensed as a surplus lines producer in his or her home state shall receive a nonresident surplus lines producer license in accordance with subsection (1) of this section. Except as to subsection (1) of this section, nothing in this section otherwise amends or supersedes any provision of Sections 83-21-17 through 83-21-31.

(5) Notwithstanding any other provision of this article, a person licensed as a limited line credit insurance or other type of limited lines producer in his or her home state shall receive a nonresident limited lines producer license in accordance with subsection (1) of this section, granting the same scope of authority as granted under the license issued by the producer's home state. For the purposes of this subsection, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines under Section 83-17-63(1) (a) through (f).

SOURCES: Laws, 2001, ch. 510, § 8; Laws, 2009, ch. 448, § 20, eff from and after Nov. 1, 2009.

Amendment Notes — The 2009 amendment, effective November 1, 2009, deleted "and 27-15-93" following "27-15-87" at the end of (1)(b).

§ 83-17-67. Individuals licensed in another state; exemption from prelicensing education or examination; 90-day application deadline.

(1) An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety (90) days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

(2) A person licensed as an insurance producer in another state who moves to this state shall make application within ninety (90) days of establishing legal residence to become a resident licensee in accordance with Section 83-17-61. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the commissioner determines otherwise by regulation.

SOURCES: Laws, 2001, ch. 510, § 9, eff from and after Jan. 1, 2002.

§ 83-17-69. Temporary license.

(1) The commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty (180) days without requiring an examination if the commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

(a) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer's business.

(b) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;

(c) To the designee of a licensed insurance producer entering active service in the Armed Forces of the United States of America; or

(d) In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of this license.

(2) The commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.

SOURCES: Laws, 2001, ch. 510, § 10, eff from and after Jan. 1, 2002.

§ 83-17-71. Violations; penalties; judicial review.

(1) The commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in an amount not to exceed One Thousand Dollars ($1,000.00) per violation and such penalty shall be deposited into the special fund of the State Treasury designated as the "Insurance Department Fund" for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

(b) Violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's commissioner;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony;

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(h) Using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(i) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(*l*) Knowingly accepting insurance business from an individual who is not licensed;

(m) Failing to comply with an administrative or court order imposing a child support obligation; or

(n) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(2) If the action by the commissioner is to nonrenew or to deny an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the commissioner within ten (10) days for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within thirty (30) days.

(3) The license of a business entity may be suspended, revoked or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor corrective action taken.

(4) In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine not to exceed One Thousand Dollars ($1,000.00) per violation and such fine shall be deposited into the special fund in the State Treasury designated as the "Insurance Department Fund."

(5) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this article and Title 83, Mississippi Code of 1972, against any person who is under investigation for or charged with a violation of this article or Title 83, Mississippi Code of 1972, even if the person's license or registration has been surrendered or has lapsed by operation of law.

(6) No licensee whose license has been revoked hereunder shall be entitled to file another application for a license as a producer within one (1) year from the effective date of such revocation or, if judicial review of such revocation is sought, within one (1) year from the date of final court order or decree affirming such revocation. Such application, when filed, may be refused by the commissioner unless the applicant shows good cause why the revocation of his license shall not be deemed a bar to the issuance of a new license.

SOURCES: Laws, 2001, ch. 510, § 11, eff from and after Jan. 1, 2002.

§ 83-17-73. Licensing required before individual may accept commission for selling.

(1) An insurance company or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

(2) A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

(3) Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed under this article at the time of the sale, solicitation or negotiation and was so licensed at that time.

(4) An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate Section 83-17-7 or any other applicable provision of Title 83, Mississippi Code of 1972.

SOURCES: Laws, 2001, ch. 510, § 12, eff from and after Jan. 1, 2002.

§ 83-17-75. Appointment of producer as agent of insurer.

(1) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(2) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the commissioner, a notice of appointment within fifteen (15) days from the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint a producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.

(3) Upon receipt of the notice of appointment, the commissioner shall verify within a reasonable time not to exceed thirty (30) days that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the commissioner shall notify the insurer within five (5) days of its determination.

(4) An insurer shall pay an appointment fee, in the amount and method of payment set forth in Section 83-5-73 for each insurance producer appointed by the insurer.

(5) An insurer shall remit, in a manner prescribed by the commissioner, a renewal appointment fee in the amount set forth in Section 83-5-73.

(6) Before the issuance of a license or certificate of authority, the commissioner shall require the company requesting appointment of the applicant as

producer for the first time to furnish a certificate to the commissioner, verified by an executive officer or managing general or special agent of such company, that the company has duly investigated the character and record of such person and has satisfied itself that such person is of good moral character and is qualified, fit and trustworthy to act as its producer. The Commissioner of Insurance may at any time require any company to obtain a credit report on a producer if the commissioner deems such request advisable. Should such credit report reflect information regarding an offense or violation in relation to which the Department of Insurance has taken action, such information shall not render the applicant ineligible for a license if applicant has complied with the order of the commissioner regarding such offense.

SOURCES: Laws, 2001, ch. 510, § 13; Laws, 2002, ch. 322, § 2; Laws, 2006, ch. 314, § 2, eff from and after July 1, 2006.

§ 83-17-77. Notification of termination of insurance business relationship; termination procedure; immunity from civil liability absent actual malice; confidential and privileged information.

(1) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with a producer shall notify the commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in Section 83-17-71 or the insurer has knowledge the producer was found by a court government body or self-regulatory organization authorized by law to have engaged in any of the activities in Section 83-17-71. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the producer.

(2) An insurer or authorized representative of the insurer that terminates the appointment, employment or contract with a producer for any reason not set forth in Section 83-17-71 shall notify the commissioner within thirty (30) days following the effective date of the termination using a format prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination.

(3) The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection (1) of this section had the insurer then known of its existence.

(4)(a) Within fifteen (15) days after making the notification required by subsections (1), (2) and (3) of this section, the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in Section 83-17-71, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(b) Within thirty (30) days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (6) of this section.

(5)(a) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the commissioner or an organization of which the commissioner is a member and that compiles the information and makes it available to other commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided under this section or any information relating to any statement that may be requested in writing by the commissioner from an insurer or producer or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under subsection (1) of this section was reported to the commissioner if the propriety of any termination for cause under subsection (1) of this section is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(b) In any action brought against a person that may have immunity under paragraph (a) of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that paragraph (a) of this subsection does not apply because the person making the statement or providing the information did so with actual malice.

(c) Paragraph (a) or (b) of this subsection shall not abrogate or modify any existing statutory or common law privileges or immunities.

(6)(a) Any documents, materials or other information in the control or possession of the Department of Insurance that is furnished by an insurer, producer or an employee or agent thereof acting on behalf of the insurer or producer or obtained by the commissioner in an investigation under this section shall be confidential by law and privileged, shall not be subject to the Public Records Act, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

(b) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to paragraph (a) of this subsection.

(c) In order to assist in the performance of the commissioner's duties under this article, the commissioner:

(i) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph (a) of this subsection, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries and with state, federal and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(ii) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(iii) May enter into agreements governing sharing and use of information consistent with this subsection.

(d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (c) of this subsection.

(e) Nothing in this article shall prohibit the commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to the Public Records Act to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries of the National Association of Insurance Commissioners.

(7) An insurer, the authorized representative of the insurer or producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with all applicable statutes.

SOURCES: Laws, 2001, ch. 510, § 14, eff from and after Jan. 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference. The reference in (4)(a) to "Section

11 of this act" was changed to "Section 83-17-71." The Joint Committee ratified the correction at its June 3, 2003 meeting.

Cross References — Mississippi Public Records Act, see §§ 25-61-1 et seq.

§ 83-17-79. Reciprocity.

(1) The commissioner shall waive any requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by Section 83-17-65, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(2) A nonresident producer's satisfaction of his or her home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

SOURCES: Laws, 2001, ch. 510, § 15, eff from and after Jan. 1, 2002.

§ 83-17-81. Producer to report to commissioner any administrative or criminal action initiated against producer.

(1) A producer shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

(2) Within thirty (30) days of the initial pretrial hearing date, a producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

SOURCES: Laws, 2001, ch. 510, § 16, eff from and after Jan. 1, 2002.

§ 83-17-83. Appellate review.

Any person aggrieved by any action or decision of the Commissioner of Insurance under the provisions of this article may appeal therefrom, within thirty (30) days after receipt of notice thereof, to the Circuit Court of the First Judicial District of Hinds County by certiorari in the manner provided by law. Such appeal shall be without supersedeas, except that the court may grant supersedeas as otherwise provided by law where the license is revoked. The court shall have the authority and jurisdiction to hear the appeal and render its decision in regard thereto in termtime or vacation.

SOURCES: Laws, 2001, ch. 510, § 17; Laws, 2007, ch. 372, § 1, eff from and after July 1, 2007.

§ 83-17-85. Inquisitorial and subpoena power of commissioner.

For the purpose of making such investigations as he may deem necessary for the proper administration of this article, the commissioner shall have inquisitorial powers and shall be empowered to subpoena witnesses and examine them under oath, provided that all testimony, documents, and other evidence required to be submitted to the commissioner pursuant to this article shall be privileged and shall not be admissible as evidence in any other proceeding.

SOURCES: Laws, 2001, ch. 510, § 18, eff from and after Jan. 1, 2002.

§ 83-17-87. Regulations.

The commissioner may, in accordance with Section 25-43-1 et seq., promulgate reasonable regulations as are necessary or proper to carry out the purposes of this article.

SOURCES: Laws, 2001, ch. 510, § 19, eff from and after Jan. 1, 2002.

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et. seq.

§ 83-17-89. Severability.

If any provisions of this article, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the article, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

SOURCES: Laws, 2001, ch. 510, § 20, eff from and after Jan. 1, 2002.

ARTICLE 3.

REGULATION OF AGENTS FOR LIFE, HEALTH, OR ACCIDENT INSURERS.

SEC.
83-17-101 through 83-17-135. Repealed.

§§ 83-17-101 through 83-17-135. Repealed.

Repealed by Laws, 2001, ch. 510, § 34, eff from and after January 1, 2002.

§ 83-17-101. [Codes, 1942, § 5722-01; Laws, 1960, ch. 367, § 1; Laws, 1977, ch. 334, § 1; Laws, 1978, ch. 462, § 1; Laws, 1997, ch. 410, § 10; Laws, 1999, ch. 487, § 7.]

§ 83-17-103. [Codes, 1942, § 5722-02; Laws, 1960, ch. 367, § 2.]

§ 83-17-105. [Codes, 1942, § 5722-03; Laws, 1960, ch. 367, § 3; Laws, 1978, ch. 462, § 2.]

§ 83-17-107. [Codes, 1942, § 5722-04; Laws, 1960, ch. 367, § 4; Laws, 1962, ch. 464; Laws, 1974, ch. 442, § 3; Laws, 1985, ch. 315, § 1; Laws, 1988, ch. 375, § 1; Laws, 1997, ch. 588, § 68.]

§ 83-17-109. [Codes, 1942, § 5722-05; Laws, 1960, ch. 367, § 5.]

§ 83-17-111. [Codes, 1942, § 5722-06; Laws, 1960, ch. 367, § 6.]

§ 83-17-113. [Codes, 1942, § 5722-07; Laws, 1960, ch. 367, § 7; Laws, 1971, ch. 408, § 1; Laws, 1999, ch. 351, § 1.]

§ 83-17-115. [Codes, 1942, § 5722-08; Laws, 1960, ch. 367, § 8.]

§ 83-17-117. [Codes, 1942, § 5722-09; Laws, 1960, ch. 367, § 9; Laws, 1976, ch. 433; Laws, 1995, ch. 361, § 1.]

§ 83-17-119. [Codes, 1942, § 5722-10; Laws, 1960, ch. 367, § 10.]

§ 83-17-121. [Codes, 1942, § 5722-11; Laws, 1960, ch. 367, § 11.]

§ 83-17-123. [Codes, 1942, § 5722-12; Laws, 1960, ch. 367, § 12; Laws, 1997, ch. 410, § 6.]

§ 83-17-125. [Codes, 1942, § 5722-13; Laws, 1960, ch. 367, § 13.]

§ 83-17-127. [Codes, 1942, § 5722-14; Laws, 1960, ch. 367, § 14.]

§ 83-17-129. [Codes, 1942, § 5722-15; Laws, 1960, ch. 367, § 15.]

§ 83-17-131. [Codes, 1942, § 5722-16; Laws, 1960, ch. 367, § 16.]

§ 83-17-133. [Codes, 1942, § 5722-18; Laws, 1960, ch. 367, § 18.]

§ 83-17-135. [Codes, 1942, § 5722-21; Laws, 1960, ch. 367, § 21.]

Editor's Note — Former § 83-17-101 was entitled "Definitions."

Former § 83-17-103 was entitled "Acting for unauthorized insurer prohibited."

Former § 83-17-105 was entitled "Acting as agent without license prohibited."

Former § 83-17-107 was entitled "Application for license. "

Former § 83-17-109 was entitled "Examination of applicant for license."

Former § 83-17-111 was entitled "Issuance or refusal of license."

Former § 83-17-113 was entitled "Nonresidents may be licensed."

Former § 83-17-115 was entitled "Agent may be licensed to represent additional insurers."

Former § 83-17-117 was entitled "Expiration and renewal of license."

Former § 83-17-119 was entitled "Temporary license."

Former § 83-17-121 was entitled "Termination of agent by insurer."

Former § 83-17-123 was entitled "Refusal, suspension, or revocation of license."

Former § 83-17-125 was entitled "Judicial review of acts of commissioner."

Former § 83-17-127 was entitled "Change of address of agent."

Former § 83-17-129 was entitled "Rules and regulations."

Former § 83-17-131 was entitled "Evidence privileged in investigations by commissioner."

Former § 83-17-133 was entitled "Penalties for violations of this article."

Former § 83-17-135 was entitled "Article inapplicable to certain agents and solicitors."

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

ARTICLE 5.

REGULATION OF AGENTS FOR FIRE AND OTHER INSURERS.

SEC.
83-17-201 through 83-17-223. Repealed.
83-17-225 through 83-17-233. Repealed.

§§ 83-17-201 through 83-17-223. Repealed.

Repealed by Laws, 2001, ch. 510, § 34, eff from and after January 1, 2002.

§ 83-17-201. [Codes, 1942, § 5723-01; Laws, 1948, ch. 352, § 1; Laws, 1962, ch. 466 § 1; Laws, 1964, ch. 472, § 1.]

§ 83-17-203. [Codes, 1942, § 5723-01; Laws, 1948, ch. 352, § 1; Laws, 1962, ch. 466 § 1; Laws, 1964, ch. 472, § 1; Laws, 1999, ch. 487, § 8.]

§ 83-17-205. [Codes, 1942, § 5723-02; Laws, 1948, ch. 352, § 2; Laws, 1964, ch. 472, § 2; Laws, 1988, ch. 375 § 2; Laws, 1994, ch. 328, § 1; Laws, 1997, ch. 588, § 69.]

§ 83-17-207. [Codes, 1942, § 5723-02; Laws, 1948, ch. 352, § 2; Laws, 1964, ch. 472, § 2.]

§ 83-17-209. [Codes, 1942, § 5723-02; Laws, 1948, ch. 352. § 2; Laws, 1964, ch. 472, § 2; Laws, 1974, ch. 442, § 4; Laws, 1985, ch. 315, § 2.]

§ 83-17-211. [Codes, 1942, § 5723-02; Laws, 1948, ch. 352, § 2; Laws, 1964, ch. 472, § 2.]

§ 83-17-213. [Codes, 1942, § 5723-02; Laws, 1948, ch. 352, § 2; Laws, 1964, ch. 472, § 2; Laws, 1996, ch. 507, § 85.]

§ 83-17-215. [Codes, 1942, § 5723-02; Laws, 1948, ch. 352, § 2; Laws, 1964, ch. 472, § 2; Laws, 1974, ch. 442, § 5; Laws, 1996, ch. 507, § 86.]

§ 83-17-217. [Codes, 1942, § 5723-03; Laws, 1948, ch. 352, § 3; Laws, 1964, ch. 472, § 3.]

§ 83-17-219. [Codes, 1942, § 5723-04; Laws, 1948, ch. 352, § 4; Laws, 1964, ch. 472, § 4.]

§ 83-17-221. [Codes, 1942, § 5723-04; Laws, 1948, ch. 352, § 4; Laws, 1964, ch. 472, § 4; Laws, 1996, ch. 507, § 87; Laws, 1997, ch. 410, § 7.]

§ 83-17-223. [Codes, 1942, § 5723-05; Laws, 1948, ch. 352, § 5; Laws, 1964, ch. 472, § 5; Laws, 2001, ch. 510, § 34.]

Editor's Note — Former § 83-17-201 was entitled "Scope of article."

Former § 83-17-203 was entitled "Definitions."

Former § 83-17-205 was entitled "Proof of qualifications of applicant for license."

Former § 83-17-207 was entitled "Powers of commissioner."

Former § 83-17-209 was entitled "Examination of applicant for license."

Former § 83-17-211 was entitled "Rules and regulations."

Former § 83-17-213 was entitled "Temporary license."

Former § 83-17-215 was entitled "Suspension of agent by insurer."

Former § 83-17-217 was entitled "Certificate of appointment of insurance solicitor."

Former § 83-17-219 was entitled "Investigations."

Former § 83-17-221 was entitled "Refusal, suspension, or revocation of license; administrative fines."

Former § 83-17-223 was entitled "Appeals."

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§§ 83-17-225 through 83-17-233. Repealed.

Repealed by Laws, 1999, ch. 367, § 1, eff from and after March 15, 1999.

§ 83-17-225. [Codes, 1942, § 5723-06; Laws, 1948, ch. 352, § 6; Laws, 1964, ch. 472, § 6, eff from and after passage (approved June 1, 1964)].

§ 83-17-227. [Laws, 1974, ch. 537, § 1, eff from and after passage (approved April 5, 1974)].

§ 83-17-229. [Laws, 1974, ch. 537, § 2, eff from and after passage (approved April 5, 1974)].

§ 83-17-231. [Laws, 1974, ch. 537, § 3, eff from and after passage (approved April 5, 1974)].

§ 83-17-233. [Laws, 1974, ch. 537, § 4, eff from and after passage (approved April 5, 1974)].

Editor's Note — Former § 83-17-225 related to the cumulative nature of the article.

Former § 83-17-227 related to prohibition as to licensing of officers or employees of lending institution, public utility or holding company; definitions.

Former § 83-17-229 related to prohibition as to licensing of officers or employees of lending institution, public utility or holding company; exceptions.

Former § 83-17-231 related to prohibition as to licensing of officers or employees of lending institution, public utility or holding company; regulations.

Former § 83-17-233 related to prohibition as to licensing of officers or employees of lending institution, public utility or holding company; application of law.

ARTICLE 6.

PRELICENSING AND CONTINUING EDUCATION FOR INSURANCE AGENTS; REQUIRED FOR LICENSURE.

SEC.	
83-17-251.	Completion of approved prelicensing and continuing educational courses; exemptions from prelicensing educational requirements; number of classroom hours required; exemptions from continuing educational requirements.
83-17-253.	Prelicensing educational and continuing educational program requirements; establishment of standards for evaluating programs.
83-17-255.	Prelicensing and continuing educational advisory committee; membership; quorum.
83-17-257.	Certification of attendance and completion of prelicensing and continuing educational programs; exceptions.
83-17-259.	Commissioner of Insurance may grant exception or extension of time.
83-17-261.	Failure of agent to meet educational requirements; penalties.

§ 83-17-251. Completion of approved prelicensing and continuing educational courses; exemptions from prelicensing educational requirements; number of classroom hours required; exemptions from continuing educational requirements.

(1) Every individual seeking to be licensed as an insurance producer in the State of Mississippi, as a condition of issuance of an original license, must furnish the Commissioner of Insurance certification on a form prescribed by the commissioner that he or she has completed an approved prelicensing course of study for the line of insurance requested.

(2) The prelicensing course of study hours shall consist of twenty (20) hours of approved prelicensing education courses per line of authority. The Commissioner of Insurance shall determine the content requirements for each prelicensing course of study. The prelicensing educational requirements of this section shall not apply to:

(a) An individual that is exempt from taking the written examination as provided in Section 83-17-39(1) and Section 83-17-67.

(b) An individual who has received a bachelor's degree with major coursework in insurance from an accredited institution of higher learning.

(c) An individual holding a current and valid CEBS, CHFC, CIC, CFP, CLU, FLMI, LUTCF designation is exempt for the life line of authority.

(d) An individual holding a current and valid RHU, CEBS, REBC, HIA designation is exempt for the accident and health or sickness line of authority.

(e) An individual holding a current and valid AAI, ARM, CIC, CPCU designation is exempt for the property and casualty lines of authority.

(f) Limited lines insurance producer and limited lines credit insurance producer as defined in Section 83-17-53.

(g) An individual that is seeking licensure for the variable life and variable annuity products line of authority only.

(3) Every individual seeking renewal of an insurance producer license, which has been in effect for a term of eighteen (18) months or less shall satisfactorily complete twelve (12) hours of study in approved continuing education courses. Every individual seeking renewal of an insurance producer license, which has been in effect for a term of more than eighteen (18) months shall satisfactorily complete twenty-four (24) hours of study in approved continuing education courses, of which three (3) hours shall have a course concentration in ethics.

(4) The continuing educational requirements of this section shall not apply to:

(a) Any individual that is exempt from taking the written examination as provided in Section 83-17-39(1) (b), (c), (e) and (g);

(b) Any limited lines producer or limited lines credit insurance producer;

(c) A person not a resident of this state who meets the continuing educational requirement in the state in which such person resides and Mississippi has a reciprocal agreement with that state; or

(d) Nonactive agents as defined in Section 83-17-1.

SOURCES: Laws, 1999, ch. 487, § 1; Laws, 2001, ch. 510, § 32; Laws, 2009, ch. 448, § 9, eff from and after Nov. 1, 2009.

Amendment Notes — The 2009 amendment effective November 1, 2009, rewrote the section.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-17-253. Prelicensing educational and continuing educational program requirements; establishment of standards for evaluating programs.

(1) To qualify for credit towards satisfaction of the requirements of this section, an educational program must be a formal program of learning which contributes directly to the professional competence of the licensee and such program must meet the standards outlined herein for prelicensing educational and continuing educational programs. The subject of each course must be approved for the lines of insurance for which the licensee is granted educational credit.

(2) Formal programs requiring attendance or self-study may be considered for credit if the required fees are paid and they meet the standards set forth by the commissioner. Course approval shall be valid for twenty-four (24) months from the date of issuance of approval.

(3) Continuing educational credit shall be allowed for service as an instructor of certified programs at any program for which participants are eligible to receive continuing educational credit. Credit for such service shall be awarded on the first presentation only unless a program has been substantially revised.

(4) Courses for prelicensing and continuing educational credit shall not be advertised or offered unless they have been approved by the commissioner or his designated advisory committee.

(5) The commissioner may grant exceptions to the requirements of this article for extenuating circumstances.

(6) The commissioner specifically reserves the right to approve or disapprove credit for prelicensing education and continuing education claimed under this section.

(7) The Commissioner of Insurance may require any original publisher or provider to submit all material to be used in his or her program to the Department of Insurance or his designee for review.

(8) All providers shall maintain a record of persons attending each course for not less than five (5) years and shall provide certificates of completion with hours earned to students upon their successful completion of each course. The certificate shall bear the course identification number as assigned by the Commissioner of Insurance or his designee.

(9) The Commissioner of Insurance may, in his discretion, designate an independent evaluation educational service to evaluate and administer education programs, subject to his direction and approval. The evaluation fee charged by such educational service shall be paid by the applicant to the service.

SOURCES: Laws, 1999, ch. 487, § 2; Laws, 2009, ch. 448, § 10, eff from and after Nov. 1, 2009.

Amendment Notes — The 2009 amendment effective November 1, 2009, inserted "prelicensing educational and" near the end of the first sentence of (1) and in (6); and rewrote (2), (4) and (5).

§ 83-17-255. Prelicensing and continuing educational advisory committee; membership; quorum.

(1) A prelicensing and continuing educational advisory committee, comprised of at least three (3) but not more than seven (7) individuals, may be appointed by and shall serve at the pleasure of the Commissioner of Insurance to advise the commissioner concerning prelicensing and continuing educational standards. Each committee member shall agree to serve a minimum of two (2) years. The chairman of the committee shall be appointed by and shall serve at the pleasure of the commissioner.

(2) A majority of those present at any meeting of the educational advisory committee shall be a quorum for purposes of performing the duties of the committee under this section.

(3) The committee may advise the commissioner on program content and exceptions as permitted under this section.

(4) The committee shall be available to consider other related matters as the commissioner may assign.

SOURCES: Laws, 1999, ch. 487, § 3; Laws, 2009, ch. 448, § 11, eff from and after Nov. 1, 2009.

Amendment Notes — The 2009 amendment, effective November 1, 2009, inserted "at least three (3) but not more than" in the first sentence of (1); and made a minor stylistic change.

§ 83-17-257. Certification of attendance and completion of prelicensing and continuing educational programs; exceptions.

(1) Educational providers shall submit proof of each attendee's successful completion of approved prelicensing and continuing educational programs to

the Commissioner of Insurance in an electronic format approved by the commissioner within thirty (30) days of the course completion.

(2) The commissioner may grant exceptions to the requirements of this section for reasonable and just causes.

(3) The responsibility for establishing whether a particular course or other program for which credit is claimed is acceptable and meets the continuing educational requirements as set forth in this section rests solely on the licensee.

SOURCES: Laws, 1999, ch. 487, § 4; Laws, 2009, ch. 448, § 12, eff from and after Nov. 1, 2009.

Amendment Notes — The 2009 amendment, effective November 1, 2009, rewrote (1) and (2).

§ 83-17-259. Commissioner of Insurance may grant exception or extension of time.

The Commissioner of Insurance, upon written request, may grant exception to or extend the time in which a licensee must comply with the continuing educational requirements of this section for reasons of poor health, military service or other reasonable and just causes.

SOURCES: Laws, 1999, ch. 487, § 5, eff from and after July 1, 2000.

§ 83-17-261. Failure of agent to meet educational requirements; penalties.

(1) Any individual failing to meet the requirements of this section and who has not been granted an extension of time within which to comply or who has submitted to the Commissioner of Insurance a false or fraudulent certificate of compliance shall be subject to suspension or revocation of all licenses issued for any kind or kinds of insurance. The individual shall be notified of his right to a hearing. No further license shall be issued to such person for any kind or kinds of insurance until such time as the person has demonstrated to the satisfaction of the commissioner that he or she has complied with all requirements of this section and all other laws applicable thereto.

(2) The Commissioner of Insurance may suspend, revoke or refuse to renew a course provider's authority to offer courses for any of the following causes:

(a) Advertising that a course is approved before the commissioner has granted such approval in writing;

(b) Submitting a course outline with material inaccuracies, either in length, presentation time or topic content;

(c) Presenting or using unapproved material in providing an approved course;

(d) Failing to conduct a course for the full time specified in the approval request submitted to the commissioner;

(e) Preparing and distributing certificates of attendance or completion before the course has been approved;

(f) Issuing certificates of attendance or completion before the completion of the course;

(g) Failing to issue certificates of attendance or completion to any licensee who satisfactorily completes a course;

(h) Failing to notify promptly the Commissioner of Insurance of suspected or known improper activities; or

(i) Any violation of state law.

(3) A course provider is responsible for the activities of persons conducting, supervising, instructing, proctoring, monitoring, moderating, facilitating or in any way responsible for the conduct of any of the activities associated with the course.

(4) In addition, the Commissioner of Insurance may require any of the following upon a finding of a violation of this section:

(a) Refunding all course tuition and fees to licensees;

(b) Providing licensees with a suitable course to replace the course that was found in violation; or

(c) Withdrawal or approval of courses sponsored by such a provider for a period determined by the commissioner.

SOURCES: Laws, 1999, ch. 487, § 6, eff from and after July 1, 2000.

ARTICLE 7.

REMEDIES OF AGENTS.

SEC.
83-17-301 through 83-17-309. Repealed.

§§ 83-17-301 through 83-17-309. Repealed.

Repealed by Laws, 2001, ch. 510, § 34, eff from and after January 1, 2002.
§ 83-17-301. [Codes, 1942, § 5834-21; Laws, 1962, ch. 456, § 1.]
§ 83-17-303. [Codes, 1942, § 5834-22; Laws, 1962, ch. 456, § 2.]
§ 83-17-305. [Codes, 1942, § 5834-23; Laws, 1962, ch. 456, § 3.]
§ 83-17-307. [Codes, 1942, § 5834-24; Laws, 1962, ch. 456, § 4.]
§ 83-17-309. [Codes, 1942, § 5834-25; Laws, 1962, ch. 456, § 5.]

Editor's Note — Former § 83-17-301 was entitled "Agents may petition for hearing on fire and casualty rating laws."

Former § 83-17-303 was entitled "Agents may petition for hearing on violations or failure to act."

Former § 83-17-305 was entitled "Hearings."

Former § 83-17-307 was entitled "Service of processes and issuance of orders."

Former § 83-17-309 was entitled "Judicial review."

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

ARTICLE 9.

LICENSING OF INSURANCE ADJUSTERS.

SEC.

83-17-401. Definitions.
83-17-403. Posing as adjuster prohibited; penalty.
83-17-405. Application for license.
83-17-407. Waiver of license requirement for adjuster licensed in another state.
83-17-409. Emergency licenses; conditions for issuing; fee.
83-17-411. Reference of claim to unlicensed adjuster prohibited.
83-17-413. Qualifications for license.
83-17-415. Continuing education requirement; certification of programs.
83-17-417. Examination requirement; exceptions; subject matter; manual.
83-17-419. License period; renewal.
83-17-421. Grounds for suspension, revocation or refusal to renew license; notice; hearing; other procedures; period for which revocation precludes new application.
83-17-423. Appeals.
83-17-425. Article supplemental to other statutes.

§ 83-17-401. Definitions.

As used in this article, unless the context otherwise requires:

(a) "Adjuster" means any person who, as an independent contractor, or as an employee of an independent contractor, adjustment bureau, association, insurance company or corporation, managing general agent or self-insured, investigates or adjusts losses on behalf of either an insurer or a self-insured, or any person who supervises the handling of claims. "Adjuster" shall not include:

(i) An attorney at law who adjusts insurance losses from time to time and incidental to the practice of law, and who does not advertise or represent that he is an adjuster;

(ii) A salaried employee of an insurer who is regularly engaged in the adjustment, investigation or supervision of insurance claims;

(iii) Persons employed only for the purpose of furnishing technical assistance to a licensed adjuster, including, but not limited to, photographers, estimators, private detectives, engineers, handwriting experts and attorneys at law;

(iv) A licensed agent or general agent of an authorized insurer who processes undisputed or uncontested losses, or both, for such insurer under policies issued by the licensed agent or general agent;

(v) A person who performs clerical duties with no negotiations with the parties on disputed or contested claims, or both;

(vi) Any person who handles claims arising under life, accident and health insurance policies; or

(vii) Any person who is a multi-peril crop insurance adjuster.

(b) "Insurer" means any insurance company or self-insured.

(c) "Commissioner" means the Commissioner of Insurance.

SOURCES: Laws, 1993, ch. 433, § 1; Laws, 2011, ch. 474, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment added (a)(vii) and made minor stylistic changes.

ATTORNEY GENERAL OPINIONS

Public adjusters perform public adjusting services in Mississippi. Dale, Sept. 14, 2005, A.G. Op. 05-0481.

In light of the need for Mississippi policy holders to have access to the services of reputable public adjusters due to the damage caused by Hurricane Katrina, the Department of Insurance is authorized to establish emergency guidelines to provide for the registration of public adjusters during the period in which the state of emergency is in effect. Dale, Sept. 14, 2005, A.G. Op. 05-0481.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1635-1638.

CJS. 46A C.J.S., Insurance §§ 1874-1876.

§ 83-17-403. Posing as adjuster prohibited; penalty.

(1) No person shall act as or hold himself out to be an adjuster in this state unless he is licensed therefor by the Commissioner of Insurance in this state, except that an individual, who is undergoing education and training as an adjuster under the direction and supervision of a licensed adjuster for a period not exceeding twelve (12) months may act as an adjuster without having an adjuster's license, if at the beginning of such training period, the name of such trainee has been registered as such with the commissioner.

(2) Any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Two Hundred Fifty Dollars ($250.00) or by confinement in the county jail for not more than six (6) months, or by both such fine and confinement.

SOURCES: Laws, 1993, ch. 433, § 2, eff from and after July 1, 1993.

§ 83-17-405. Application for license.

Application for a license as an insurance adjuster shall be made to the commissioner upon forms as prescribed and furnished by the commissioner. As a part of, or in connection with, any such application, the applicant shall furnish such information concerning his identity, personal history, experience, business record and any other pertinent facts as the commissioner may reasonably require.

SOURCES: Laws, 1993, ch. 433, § 3, eff from and after July 1, 1993.

§ 83-17-407. Waiver of license requirement for adjuster licensed in another state.

The commissioner may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

SOURCES: Laws, 1993, ch. 433, § 4, eff from and after July 1, 1993.

§ 83-17-409. Emergency licenses; conditions for issuing; fee.

In the event of a catastrophe or emergency which arises out of a disaster, act of God, riot, civil commotion, conflagration or other similar occurrence, the commissioner, upon application, shall issue an emergency license to persons who are residents or nonresidents of this state and who may or may not be otherwise licensed adjusters. Such emergency license shall remain in force for a period not to exceed ninety (90) days, unless extended for an additional period of ninety (90) days by the commissioner. The applicant must be certified by (a) a person licensed under the provisions of this article, or by (b) an insurer who maintains an office in this state and is licensed to do business in this state. The licensed adjuster or insurer who certifies the applicant under the provisions of this section shall be responsible for the loss or claims practices of the emergency license holder.

Within five (5) days of any applicant beginning work as an adjuster under this section, the employer of such adjuster shall certify to the commissioner such application without being deemed in violation of this article, provided that the commissioner, after notice and hearing, may revoke the emergency license upon the grounds as otherwise contained in this article providing for revocation of an adjuster's license.

The fee for an emergency license shall be in an amount not to exceed Fifty Dollars ($50.00) as determined by the commissioner and shall be due and payable within thirty (30) days of the issuance of such emergency license.

SOURCES: Laws, 1993, ch. 433, § 5, eff from and after July 1, 1993.

§ 83-17-411. Reference of claim to unlicensed adjuster prohibited.

An insurer shall not knowingly refer any claim or loss for adjustment in this state to any person purporting to be or acting as an insurance adjuster unless such person is currently licensed as such as required in this article.

SOURCES: Laws, 1993, ch. 433, § 6, eff from and after July 1, 1993.

§ 83-17-413. Qualifications for license.

The commissioner shall license as an insurance adjuster only an individual who has otherwise complied with this article and who has furnished evidence satisfactory to the commissioner that:

(a) He is at least eighteen (18) years of age;

(b) He is a bona fide resident of this state, or is a resident of a state or country which will permit residents of this state to act as insurance adjusters in such other state or country;

(c) If he is a nonresident of the United States, he has complied with all federal laws pertaining to employment or the transaction of business in the United States;

(d) He is a trustworthy person;

(e) He has had experience or special education or training with reference to the handling of loss claims under insurance contracts of sufficient duration and extent to make him competent to fulfill the responsibilities of an insurance adjuster; and

(f) He has successfully passed an examination as required by the commissioner in accordance with this article or has been exempted according to the provisions of this article.

SOURCES: Laws, 1993, ch. 433, § 7, eff from and after July 1, 1993.

§ 83-17-415. Continuing education requirement; certification of programs.

The commissioner shall adopt a procedure for certifying continuing education programs. Each adjuster, in order to renew a license issued under this article, shall participate in a continuing education program(s) for at least twelve (12) hours each license year.

SOURCES: Laws, 1993, ch. 433, § 8, eff from and after July 1, 1993.

§ 83-17-417. Examination requirement; exceptions; subject matter; manual.

(1) Each applicant for a license as an adjuster, before the issuance of such license, shall personally take and pass, to the satisfaction of the commissioner, an examination as a test of his qualifications and competency; but the requirement of an examination shall not apply to any of the following:

(a) An applicant who for the one-year period next preceding July 1, 1993, has been principally engaged in the investigation, adjustment or supervision of losses and who is so engaged on July 1, 1993;

(b) An applicant for the renewal of a license issued hereunder;

(c) An applicant who is licensed as an insurance adjuster, as defined by this article, in another state with which state a reciprocal agreement has been entered into by the commissioner; or

(d) Any person who has completed a course or training program in adjusting of losses as prescribed and approved by the commissioner and is certified to the commissioner upon completion of the course that such person has completed the course or training program, and has passed an examination testing his knowledge and qualification, as prescribed by the commissioner.

(2) Each examination for a license as an adjuster shall be as the commissioner may prescribe and shall be of sufficient scope reasonably to test the applicant's knowledge relative to the kinds of insurance which may be dealt with under the license applied for and the duties, responsibilities and laws of this state applicable to such a licensee.

(3) The commissioner shall prepare and make available to applicants a manual or instructions specifying in general terms the subjects which may be covered in any examination for such a license.

SOURCES: Laws, 1993, ch. 433, § 9, eff from and after July 1, 1993.

§ 83-17-419. License period; renewal.

(1) Each license issued to an adjuster shall expire on May 31 following the date of issue, unless prior thereto it is revoked or suspended by the commissioner.

(2) Each adjuster shall file an application for renewal of license on the form and in the manner prescribed by the commissioner for such purpose. Upon the filing of such application for renewal of license and the payment of the required fees, the current license shall continue to be in force until the renewal license is issued by the commissioner or until the commissioner has refused for cause to issue such renewal license, as provided in this article, and has given notice of such refusal in writing to the adjuster.

SOURCES: Laws, 1993, ch. 433, § 10; Laws, 1996, ch. 305, § 1, eff from and after July 1, 1996.

§ 83-17-421. Grounds for suspension, revocation or refusal to renew license; notice; hearing; other procedures; period for which revocation precludes new application.

(1) A license may be refused, or a license duly issued may be suspended or revoked or the renewal thereof refused by the commissioner if, after notice and hearing as hereinafter provided, he finds that the applicant for, or holder of, such license:

(a) Has wilfully violated any provision of the insurance laws of this state; or

(b) Has intentionally made a material misstatement in the application for such license; or

(c) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(d) Has misappropriated or converted to his own use or illegally withheld money belonging to an insurer or beneficiary; or

(e) Has otherwise demonstrated lack of trustworthiness or competence to act as an adjuster; or

(f) Has been guilty of fraudulent or dishonest practices or has been convicted of a felony; or

(g) Has materially misrepresented the terms and conditions of insurance policies or contracts; or wilfully exaggerated prospective returns on investment features of policies or fails to identify himself as an adjuster and in so doing receives a compensation for his participation in the sale of insurance; or

(h) Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance or annuity contract legally issued by any insurer, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another; or

(i) Has obtained or attempted to obtain such license, not for the purpose of holding himself out to the general public as an adjuster, but primarily for the purpose of soliciting, negotiating or procuring insurance or annuity contracts covering himself or members of his family.

(2) Before any license shall be refused (except for failure to pass a required written examination) or suspended or revoked or the renewal thereof refused hereunder, the commissioner shall give notice of his intention so to do, by registered mail, to the applicant for or holder of such license and the insurer whom he represents or who desires that he be licensed, and shall set a date not less than twenty (20) days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the insurer may appear to be heard and produce evidence. Such notice shall constitute automatic suspension of license if the person involved is a licensed adjuster. In the conduct of such hearing, the commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon the termination of such hearing, findings shall be reduced to writing and, upon approval by the commissioner, shall be filed in his office; and notice of the findings shall be sent by registered mail to the applicant or licensee and the insurer concerned.

(3) Where the grounds set out in paragraph (1)(d) or (1)(g) are the grounds for any hearing, the commissioner may, in his discretion in lieu of the hearing provided for in subsection (2) of this section, file a petition to suspend or revoke any license authorized hereunder in a court of competent jurisdiction of the county or district in which the alleged offense occurred. In such cases,

subpoenas may be issued for witnesses, and mileage and witness fees paid as in other cases. All costs of such cause shall be paid by the defendant, if found guilty, and if costs cannot be made and collected from the defendant, such costs shall be assessed against the company issuing the contract involved in such cause.

(4) No licensee whose license has been revoked hereunder shall be entitled to file another application for a license as an adjuster within one (1) year from the effective date of such revocation or, if judicial review of such revocation is sought, within one (1) year from the date of final court order or decree affirming such revocation. Such application, when filed, may be refused by the commissioner unless the applicant shows good cause why the revocation of his license shall not be deemed a bar to the issuance of a new license.

SOURCES: Laws, 1993, ch. 433, § 11, eff from and after July 1, 1993.

§ 83-17-423. Appeals.

Any person aggrieved by any action or decision of the Commissioner of Insurance under the provisions of this article may appeal therefrom to the Circuit Court of the First Judicial District of Hinds County in the manner provided by law. The circuit court shall have the authority and jurisdiction to hear the appeal and render its decision in regard thereto in termtime or vacation.

SOURCES: Laws, 1993, ch. 433, § 12, eff from and after July 1, 1993.

§ 83-17-425. Article supplemental to other statutes.

This article is declared to be cumulative and supplemental to all other valid statutes relating to insurance agents, solicitors and adjusters.

SOURCES: Laws, 1993, ch. 433, § 13, eff from and after July 1, 1993.

ARTICLE 11.

LICENSING OF PUBLIC ADJUSTERS.

SEC.

83-17-501. Definitions.
83-17-503. Posing as public adjuster prohibited; penalties.
83-17-505. Application for license.
83-17-507. Waiver of license requirement for public adjuster licensed in another state.
83-17-509. Emergency licenses; conditions for issuing; fee.
83-17-511. Qualifications for license.
83-17-513. Continuing education requirement; certification of programs.
83-17-515. Examination requirement; exceptions; subject matter; manual.
83-17-517. Expiration of license; renewal.
83-17-519. Grounds for suspension or revocation of license or refusal to renew; notice; hearing; filing new application after revocation of license.
83-17-521. Appeals.

83-17-523. Written contract required; compensation; cancellation of contract; ethical requirements.
83-17-525. Article does not entitle person not licensed by Supreme Court to practice law in state.
83-17-527. Article cumulative and supplemental to other statutes; rules and regulations.

§ 83-17-501. Definitions.

As used in this article, unless the context otherwise requires:

(a) "Certified" means, except as used in Section 83-17-519(2), written representations addressed to the commissioner concerning the integrity, competence and qualifications of a person, in form and content satisfactory to the commissioner, or concerning other matters as the commissioner may by regulation hereafter prescribe.

(b) "Commissioner" means the Commissioner of Insurance.

(c) "Department" means the Mississippi Insurance Department.

(d) "Insurer" means any insurance company or self-insured person or entity.

(e) "Public adjuster" means any person who, for compensation or any other thing of value on behalf of the insured and subject to the prohibition provided in Section 73-3-55:

(i) Acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;

(ii) Advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or

(iii) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

A public adjuster shall not include an attorney at law who does not advertise or represent that he is a public adjuster.

SOURCES: Laws, 2007, ch. 497, § 1, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.
Licensing of insurance adjusters, see §§ 83-17-401 et seq.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice

Guide.

Law Reviews. Hurricane Katrina Special Edition: Disaster Mediations in Mississippi: The Influx of Public Adjusters into Mississippi after Hurricane Katrina Compels the Mississippi Legislature to Enact the Mississippi Public Adjuster Act, 77 Miss. L.J. 761, Spring, 2008.

§ 83-17-503. Posing as public adjuster prohibited; penalties.

(1) No person shall act as or hold himself out to be a public adjuster in this state unless he is licensed therefor by the commissioner, except that an individual, who is undergoing education and training as a public adjuster under the direction and supervision of a licensed public adjuster for a period not exceeding twelve (12) months may act as a public adjuster without having a public adjuster's license, if at the beginning of such training period, the name of such trainee has been registered as such with the commissioner.

(2) Any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by confinement in the county jail for not more than one (1) year, or by both such fine and confinement.

SOURCES: Laws, 2007, ch. 497, § 2, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.

Posing as an insurance adjuster prohibited, see § 83-17-403.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 83-17-505. Application for license.

Application for a license as a public adjuster shall be made to the commissioner upon forms as prescribed and furnished by the commissioner. As a part of, or in connection with, any such application, the applicant shall furnish such information concerning his identity, personal history, experience, business record and any other pertinent facts as the commissioner may reasonably require.

SOURCES: Laws, 2007, ch. 497, § 3, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.

Application for insurance adjuster license, see § 83-17-405.

§ 83-17-507. Waiver of license requirement for public adjuster licensed in another state.

The commissioner may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

SOURCES: Laws, 2007, ch. 497, § 4, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.

Waiver of license requirement for insurance adjuster licensed in another state, see § 83-17-407.

§ 83-17-509. Emergency licenses; conditions for issuing; fee.

In the event of a catastrophe or emergency which arises out of a disaster, Act of God, riot, civil commotion, conflagration or other similar occurrence, the commissioner, upon application, may issue an emergency license to persons who are residents or nonresidents of this state and who may or may not be otherwise licensed public adjusters. Such emergency license shall remain in force for a period not to exceed ninety (90) days, unless extended for an additional period of ninety (90) days by the commissioner. The applicant must be certified by (a) a person licensed under the provisions of this article, or by (b) such other person as may be approved by the commissioner. The licensed public adjuster or other person who certifies the applicant under the provisions of this section shall be responsible for the loss or claims practices of the emergency license holder.

Within five (5) days of any applicant beginning work as a public adjuster under this section, the application and certification provided for in the preceding paragraph shall be provided to the commissioner without such public adjuster being deemed in violation of this article, provided that the commissioner, after notice and hearing, may revoke the emergency license upon the grounds as otherwise contained in this article providing for revocation of a public adjuster's license.

The fee for an emergency license shall be in an amount not to exceed Fifty Dollars ($50.00) as determined by the commissioner and shall be due and payable within thirty (30) days of the issuance of such emergency license.

SOURCES: Laws, 2007, ch. 497, § 5, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.

Emergency insurance adjuster license, see § 83-17-409.

§ 83-17-511. Qualifications for license.

The commissioner shall license as a public adjuster only an individual who has otherwise complied with this article and who has furnished evidence satisfactory to the commissioner that:

(a) He is at least twenty-one (21) years of age;

(b) He is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as public adjusters in such other state;

(c) He is a trustworthy person;

(d) He has had experience or special education or training with reference to the handling of loss claims under insurance contracts of sufficient duration and extent to make him competent to fulfill the responsibilities of a public adjuster; and

(e) He has successfully passed an examination as required by the commissioner in accordance with this article or has been exempted according to the provisions of this article.

SOURCES: Laws, 2007, ch. 497, § 6, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.
Qualifications for insurance adjuster license, see § 83-17-413.

§ 83-17-513. Continuing education requirement; certification of programs.

The commissioner shall adopt a procedure for certifying continuing education programs for public adjusters. Each public adjuster, in order to renew a license issued under this article, shall participate in a continuing education program(s) for at least twelve (12) hours each license year.

SOURCES: Laws, 2007, ch. 497, § 7, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.
Continuing education requirement for insurance adjusters, see § 83-17-415.

§ 83-17-515. Examination requirement; exceptions; subject matter; manual.

(1) Each applicant for a license as a public adjuster, before the issuance of such license, shall personally take and pass, to the satisfaction of the commissioner, an examination as a test of his qualifications and competency; but the requirement of an examination shall not apply to any of the following:

(a) An applicant for the renewal of a license issued hereunder;

(b) An applicant who is licensed as a public adjuster, as defined by this article, in another state with which state a reciprocal agreement has been entered into by the commissioner; or

(c) Any person who has completed a course or training program in adjusting for losses as prescribed and approved by the commissioner and is certified to the commissioner upon completion of the course that such person has completed the course or training program, and has passed an examination testing his knowledge and qualification, as prescribed by the commissioner.

(2) Each examination for a license as a public adjuster shall be as the commissioner may prescribe and shall be of sufficient scope reasonably to test the applicant's knowledge relative to the kinds of insurance which may be dealt with under the license applied for and the duties, responsibilities and laws of this state applicable to such a licensee.

(3) The commissioner shall prepare and make available to applicants a manual or instructions specifying in general terms the subjects which may be covered in any examination for such a license.

SOURCES: Laws, 2007, ch. 497, § 8, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.
Insurance adjuster examination requirement, see § 83-17-417.

§ 83-17-517. Expiration of license; renewal.

(1) Each license issued to a public adjuster shall expire on May 31 following the date of issue, unless prior thereto it is revoked or suspended by the commissioner.

(2) Each public adjuster shall file an application for renewal of license on the form and in the manner prescribed by the commissioner for such purpose. Upon the filing of such application for renewal of license and the payment of the required fees, prior to the expiration date, the current license shall continue to be in force until the renewal license is issued by the commissioner or until the commissioner has refused for cause to issue such renewal license, as provided in this article, and has given notice of such refusal in writing to the public adjuster.

SOURCES: Laws, 2007, ch. 497, § 9, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.
Expiration and renewal of insurance adjuster license, see § 83-17-419.

§ 83-17-519. Grounds for suspension or revocation of license or refusal to renew; notice; hearing; filing new application after revocation of license.

(1) A license may be refused, or a license duly issued may be suspended or revoked or the renewal thereof refused by the commissioner, or the commissioner may levy a civil penalty in an amount not to exceed Five Thousand Dollars ($5,000.00) per violation, or both, and any such penalty shall be deposited into the special fund of the State Treasury designated as the "Insurance Department Fund," if, after notice and hearing as hereinafter provided, he finds that the applicant for, or holder of, such license:

(a) Has intentionally made a material misstatement in the application for such license; or

(b) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(c) Has misappropriated or converted to his own use or illegally withheld money belonging to another person or entity; or

(d) Has otherwise demonstrated lack of trustworthiness or competence to act as a public adjuster; or

(e) Has been guilty of fraudulent or dishonest practices or has been convicted of a felony; or

(f) Has materially misrepresented the terms and conditions of insurance policies or contracts or failed to identify himself as a public adjuster; or

(g) Has obtained or attempted to obtain such license for a purpose other than holding himself out to the general public as a public adjuster; or

(h) Has violated any insurance laws, or any regulation, subpoena or order of the commissioner or of another state's commissioner of insurance.

(2) Before any license shall be refused (except for failure to pass a required written examination) or suspended or revoked or the renewal thereof refused hereunder, the commissioner shall give notice of his intention so to do, by certified mail, return receipt requested, to the applicant for or holder of such license, and shall set a date not less than twenty (20) days from the date of mailing such notice when the applicant or licensee may appear to be heard and produce evidence in opposition to such refusal, suspension or revocation. Such notice shall constitute automatic suspension of license if the person involved is a licensed public adjuster. In the conduct of such hearing, the commissioner or any regular salaried employee of the department specially designated by him for such purpose shall have the power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon the termination of such hearing, findings shall be reduced to writing and, upon approval by the commissioner, shall be filed in his office; and notice of the findings shall be sent by certified mail, return receipt requested, to the applicant or licensee.

(3) Where the grounds set out in subsection (1) (c) or (1) (f) of this section are the grounds for any hearing, the commissioner may, in his discretion in lieu of the hearing provided for in subsection (2) of this section, file a petition requesting the court to suspend or revoke any license authorized hereunder in a court of competent jurisdiction of the county or district in which the alleged offense occurred. In such cases, subpoenas may be issued for witnesses, and mileage and witness fees paid as in other cases. All costs of such cause shall be paid by the defendant, if the finding of the court be against him.

(4) No licensee whose license has been revoked hereunder shall be entitled to file another application for a license as a public adjuster within one (1) year from the effective date of such revocation or, if judicial review of such revocation is sought, within one (1) year from the date of final court order or decree affirming such revocation. An application filed after such one-year period shall be refused by the commissioner unless the applicant shows good cause why the revocation of his license shall not be deemed a bar to the issuance of a new license.

SOURCES: Laws, 2007, ch. 497, § 10, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.
Grounds for suspension or revocation of insurance adjuster license, see § 83-17-421.

§ 83-17-521. Appeals.

Any person aggrieved by any action or decision of the commissioner under the provisions of this article may appeal therefrom to the Circuit Court of the

First Judicial District of Hinds County in the manner provided by law. The circuit court shall have the authority and jurisdiction to hear the appeal and render its decision in regard thereto in termtime or vacation.

SOURCES: Laws, 2007, ch. 497, § 11, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.
Insurance adjuster appeals, see § 83-17-423.

§ 83-17-523. Written contract required; compensation; cancellation of contract; ethical requirements.

(1) Public adjusters shall ensure that all contracts for their services are in writing, signed by the insured and the public adjuster who solicited the contract, and a copy of the contract shall be provided to the insured upon execution. All such contracts shall be subject to the following provisions:

(a) No public adjuster shall charge, agree to, or accept as compensation any payment, commission, fee or other thing of value equal to more than ten percent (10%) of any insurance settlement or the proceeds of any claim investigated.

(b) No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit or other thing of value, prior to partial or full settlement of a claim.

(c) Any costs to be reimbursed to a public adjuster out of the proceeds of a settlement shall be specified by kind and estimated amounts.

(d) A public adjuster's contract with the insured shall be revocable or cancelable by the insured without cause and without penalty or obligation for at least five (5) business days after the contract is executed by the insured. Nothing in this provision shall be construed to prevent an insured from pursuing any civil legal remedy to revoke or cancel the contract after the expiration of such cancellation period.

(2) Public adjusters shall adhere to the following ethical requirements:

(a) No public adjuster shall undertake the adjustment of any claim for which the public adjuster is not currently competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the public adjuster's current expertise.

(b) No public adjuster shall, as a public adjuster, represent any person or entity whose claim the public adjuster has previously adjusted while acting as an independent adjuster representing any insurer, either directly or through an independent adjusting firm retained by the insurer.

(c) A public adjuster shall not knowingly make any oral or written material misrepresentations or statements to any insured or potential insured which are false and intended to injure any person engaged in the business of insurance.

(d) No public adjuster shall knowingly enter into a contract to adjust a residential property claim subsequent to a declaration of total loss by an insurer, unless the services to be provided by the public adjuster can reasonably be expected to result in the insured obtaining an insurance settlement, net of the public adjuster's compensation, in excess of the amount the insured would have obtained without the services of the public adjuster.

(e) A public adjuster shall advise each insured that the insured has the right to retain an attorney at law of his choice throughout the public adjuster's investigation and adjustment of the claim.

(f) If the claim is not settled by the public adjuster, the public adjuster shall advise the insured that the insured has the right to retain an attorney at law of his choice.

(g) No public adjuster shall contract for, agree to, or receive anything of value from any attorney at law or other person acting in concert with any attorney at law (i) for referring claims to the attorney, or (ii) in connection with any claim for which the public adjuster has performed or intends to perform services.

(h) No public adjuster shall split any attorney's fee with any attorney at law.

(i) A public adjuster shall not testify as an expert witness in any judicial or administrative proceeding while maintaining a pecuniary interest in the outcome of the proceeding, as otherwise permitted by Section 83-17-523(1)(a); provided, however, that a public adjuster may testify as an expert witness if pursuant to the terms of his contract his compensation is converted to a specified hourly rate, which rate (i) is subject to such limitations as may be prescribed by the commissioner, and (ii) is not subject to any contingencies. In the event of a conversion of the public adjuster's contract to an hourly rate agreement, the prior fee arrangement shall be inadmissible at trial.

SOURCES: Laws, 2007, ch. 497, § 12, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.

§ 83-17-525. Article does not entitle person not licensed by Supreme Court to practice law in state.

This article shall not be construed as entitling a person who is not licensed by the Mississippi Supreme Court to practice law in this state.

SOURCES: Laws, 2007, ch. 497, § 13, eff from and after July 1, 2007.

§ 83-17-527. Article cumulative and supplemental to other statutes; rules and regulations.

This article is declared to be cumulative and supplemental to all other valid statutes relating to insurance agents, solicitors, adjusters and public adjusters. The Commissioner of Insurance is directed and authorized to make such reasonable rules and regulations as may be necessary for the administration of this article, including, but not limited to, rules and regulations (a) establishing procedures for the filing and approval of contracts to be used by public adjusters and/or prescribing one or more model contracts for use by public adjusters, (b) regulating solicitations by public adjusters, and (c) establishing bonding and/or errors and omissions insurance requirements for public adjusters.

SOURCES: Laws, 2007, ch. 497, § 14, eff from and after July 1, 2007.

Cross References — Commissioner of insurance generally, see § 83-1-3.

CHAPTER 18

Insurance Administrators and Managing General Agents

Insurance Administrators 83-18-1
Managing General Agents Act 83-18-101

INSURANCE ADMINISTRATORS

Sec.
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§ 83-18-1. Definitions.

As used in this chapter unless the context otherwise requires:

(a) "Administrator" or "third party administrator" or "TPA" means a person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state, or residents of another state from offices in this state, in connection with life or health insurance coverage or annuities, except any of the following:

(i) An employer on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of such employer;

(ii) A union on behalf of its members;

(iii) An insurer which is authorized to transact insurance in this state with respect to a policy lawfully issued and delivered in and pursuant to the laws of this state or another state;

(iv) An agent or broker licensed to sell life or health insurance in this state, whose activities are limited exclusively to the sale of insurance;

(v) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) A trust and its trustees, agents and employees acting pursuant to such trust established in conformity with 29 U.S.C. Section 186;

(vii) A trust exempt from taxation under Section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to such trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which meets the requirements of Section 401(f) of the Internal Revenue Code;

(viii) A credit union or a financial institution which is subject to supervision or examination by federal or state banking authorities, or a mortgage lender, to the extent they collect and remit premiums to licensed insurance agents or authorized insurers in connection with loan payments;

(ix) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized collection if the company does not adjust or settle claims;

(x) A person who adjusts or settles claims in the normal course of that person's practice or employment as an attorney at law and who does not collect charges or premiums in connection with life or health insurance coverage or annuities;

(xi) An adjuster licensed by this state whose activities are limited to adjustment of claims;

(xii) A person who acts solely as an administrator of one or more bona fide employee benefit plans established by an employer or an employee organization; or

(xiii) A person licensed as a managing general agent in this state, whose activities are limited exclusively to the scope of activities conveyed under such license.

(b) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(c) "Commissioner" means the Commissioner of Insurance.

(d) "Insurance" or "insurance coverage" means any coverage offered or provided by an insurer.

(e) "Insurer" means any person undertaking to provide life or health insurance coverage in this state. For the purposes of this chapter, insurer includes a licensed insurance company, a prepaid hospital or medical care plan, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of insurance subject to state insurance regulation. Insurer does not include a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974.

(f) "Underwrites" or "underwriting" means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer; the overall planning and coordinating of an insurance program; and the ability to procure bonds and excess insurance.

SOURCES: Laws, 1991, ch. 422, § 1, eff from and after July 1, 1991.

Federal Aspects — Sections 401 and 501 of the Internal Revenue Code, see 26 USCS §§ 401, 501.

Employee Retirement Income Security Act of 1974, see generally 29 USCS § 1001 et seq.

RESEARCH REFERENCES

Practice References. Business Insurance Law and Practice Guide, (Matthew Bender).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

ALR. Duty of liability insurer to initiate settlement negotiations. 51 A.L.R.5th 701.

Requirement that multicoverage umbrella insurance policy offer uninsured-or underinsured-motorist coverage equal to liability limits under umbrella provisions. 52 A.L.R.5th 451.

§ 83-18-3. License required to act as administrator; penalties; application; renewal of license; bonding requirements; revocation of license; fines; rules and regulations.

(1) No person shall act as or hold himself out to be an administrator in this state, other than an adjuster licensed in this state for the kinds of business for which he is acting as an adjuster, unless he shall hold a license as an administrator issued by the Mississippi Commissioner of Insurance. Failure to hold such a license shall subject the administrator to a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00). Such license shall be issued by the commissioner to an administrator unless the commissioner, after due notice and hearing, shall have determined that the administrator is not competent, trustworthy, financially responsible or of good personal and business reputation or has had a previous application for an insurance license denied for cause within five (5) years.

(2) All applications shall be accompanied by a fee of Two Hundred Dollars ($200.00). The license is renewable annually on the date of issue. A request for renewal must be accompanied by a renewal fee of One Hundred Dollars ($100.00). Prior to the issuance or renewal of the license of any administrator, a fidelity bond in a form and amount as determined by the commissioner shall be obtained by the licensee.

(3) After notice and hearing, the commissioner may revoke a license or fine an administrator not more than Five Hundred Dollars ($500.00), or both, or the commissioner may suspend such license or fine such administrator not more than Five Hundred Dollars ($500.00), or both, upon finding that either the administrator violated any of the requirements of this chapter or the administrator is not competent, trustworthy, financially responsible or of good personal and business reputation.

(4) The Commissioner of Insurance may promulgate rules and regulations which are necessary to accomplish the purposes of this chapter.

(5) In addition to the reasons specified in this section, the commissioner shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(6) Each application or filing made under this section shall include the Social Security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1991, ch. 422, § 2; Laws, 1996, ch. 507, § 88; Laws, 1997, ch. 588, § 70, eff from and after July 1, 1997.

Editor's Note — Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Certificate of authority required to act as administrator, see § 83-18-23.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.

§ 83-18-5. Written agreement between administrator and insurer or employer; termination of agreement.

(1) No administrator shall act as such without a written agreement between the administrator and the insurer or employer, and such written agreement shall be retained as part of the official records of both the insurer or employer and the administrator for the duration of the agreement and for five (5) years thereafter. The agreement shall contain all provisions required by

this statute, except insofar as those requirements do not apply to the functions performed by the administrator.

(2) The written agreement shall include a statement of duties which the administrator is expected to perform on behalf of the insurer or employer and the lines, classes or types of insurance for which the administrator is to be authorized to administer. The agreement shall make provision with respect to underwriting or other standards pertaining to the business underwritten by such insurer.

(3) The insurer, employer or administrator may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the administrator during the pendency of any dispute regarding the cause for termination of the written agreement. The insurer must fulfill any lawful obligations with respect to policies affected by the written agreement, regardless of any dispute between the insurer and the administrator.

SOURCES: Laws, 1991, ch. 422, § 3, eff from and after July 1, 1991.

Cross References — Additional requirements of written agreement, see § 83-18-15.

§ 83-18-7. Payments to administrator deemed received by insurer; payments to administrator not deemed paid to insured or claimant until received by insured or claimant.

If an insurer utilizes the services of an administrator, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured party shall be deemed to have been received by the insurer, and the payment of return premiums or claim payments forwarded by the insurer to the administrator shall not be deemed to have been paid to the insured party or claimant until such payments are received by the insured party or claimant. Nothing in this section limits any right of the insurer against the administrator resulting from the failure of the administrator to make payments to the insurer, insured parties or claimants.

SOURCES: Laws, 1991, ch. 422, § 4, eff from and after July 1, 1991.

§ 83-18-9. Record keeping requirements.

(1) Every administrator shall maintain and make available to the insurer or employer complete books and records of all transactions performed on behalf of the insurer or employer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and must be maintained for a period of not less than five (5) years from the date of their creation.

(2) The commissioner shall have access to books and records maintained by an administrator for the purposes of examination, audit and inspection. Any trade secrets contained in such books and records, including the identity and addresses of policyholders and certificate holders, shall be kept confidential,

except that the commissioner may use such information in any proceeding instituted against the administrator.

(3) The insurer or employer shall own the records generated by the administrator pertaining to the insurer; however, the administrator shall retain the right to continuing access to books and records to permit the administrator to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

(4) In the event the insurer or employer and the administrator cancel their agreement, notwithstanding the provisions of subsection (1) of this section, the administrator may, by written agreement with the insurer or employer, transfer all records to a new administrator rather than retain them for five (5) years. In such cases, the new administrator shall acknowledge, in writing, that it is responsible for retaining the records of the prior administrator as required in subsection (1) of this section.

SOURCES: Laws, 1991, ch. 422, § 5, eff from and after July 1, 1991.

§ 83-18-11. Advertising by administrator.

An administrator may use only such advertising pertaining to the business underwritten by an insurer as has been approved in writing by the insurer in advance of its use.

SOURCES: Laws, 1991, ch. 422, § 6, eff from and after July 1, 1991.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 47.

§ 83-18-13. Responsibilities of insurer utilizing services of administrator.

(1) If an insurer utilizes the services of an administrator, the insurer shall be responsible for determining the benefits, premium rates, underwriting criteria and claims payment procedures applicable to such coverage and for securing reinsurance, if any. The rules pertaining to these matters must be provided, in writing, by the insurer to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in the written agreement between the administrator and the insurer.

(2) It is the sole responsibility of the insurer or employer to provide for competent administration of its programs.

(3) In cases where an administrator benefits for more than one hundred (100) certificate holders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least one (1) such review shall be an on-site audit of the operations of the administrator.

SOURCES: Laws, 1991, ch. 422, § 7, eff from and after July 1, 1991.

§ 83-18-15. Administrator's duties as fiduciary for insurer.

(1) All insurance charges or premiums collected by an administrator on behalf of or for an insurer or insurers, and the return of premiums received from that insurer or insurers, shall be held by the administrator in a fiduciary capacity. Such funds shall be immediately remitted to the person or persons entitled to them or shall be deposited promptly in a fiduciary account established and maintained by the administrator in a federally insured financial institution. The written agreement between the administrator and the insurer shall provide for the administrator to periodically render an accounting to the insurer detailing all transactions performed by the administrator pertaining to the business underwritten by the insurer.

(2) If charges or premiums deposited in a fiduciary account have been collected on behalf of or for one or more insurers, the administrator shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each insurer. The administrator shall keep copies of all the records, and upon request of an insurer, shall furnish the insurer with copies of the records pertaining to such deposits and withdrawals.

(3) The administrator shall not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited. Withdrawals from such account shall be made as provided in the written agreement between the administrator and the insurer. The written agreement shall address, but not be limited to, the following:

(a) Remittance to an insurer entitled to remittance;

(b) Deposit in an account maintained in the name of the insurer;

(c) Transfer to and deposit in a claims-paying account, with claims to be paid as provided in subsection (4);

(d) Payment to a group policyholder for remittance to the insurer entitled to such remittance;

(e) Payment to the administrator of its commissions, fees or charges; and

(f) Remittance of return premium to the person or persons entitled to such return premium.

(4) All claims paid by the administrator from funds collected on behalf of or for an insurer shall be paid only on drafts or checks of and as authorized by the insurer.

SOURCES: Laws, 1991, ch. 422, § 8, eff from and after July 1, 1991.

Cross References — Written agreement between administrator and insurer, see § 83-18-5.

§ 83-18-17. Administrator's compensation not to be contingent on claim experience.

(1) An administrator shall not enter into any agreement or understanding with an insurer in which the effect is to make the amount of the administrator's commissions, fees or charges contingent upon savings effected in the adjustment, settlement and payment of losses covered by the insurer's obligations. This provision shall not prohibit an administrator from receiving performance-based compensation for providing hospital or other auditing services.

(2) This section shall not prevent the compensation of an administrator from being based on premiums or charges collected or the number of claims paid or processed.

SOURCES: Laws, 1991, ch. 422, § 9, eff from and after July 1, 1991.

§ 83-18-19. Disclosure requirements of administrator.

(1) When the services of an administrator are utilized, the administrator shall provide a written notice approved by the insurer to covered individuals advising them of the identity of, and relationship among, the administrator, the policyholder and the insurer.

(2) When an administrator collects funds, the reason for collection of each item must be identified to the insured party and each item must be shown separately from any premium. Additional charges may not be made for services to the extent the services have been paid for by the insurer.

(3) The administrator shall disclose to the insurer or employer all charges, fees and commissions received from all services in connection with the provision of administrative services for the insurer, including any fees or commissions paid by insurers providing reinsurance.

SOURCES: Laws, 1991, ch. 422, § 10, eff from and after July 1, 1991.

§ 83-18-21. Administrator to deliver written notices from insurer promptly.

Any policies, certificates, booklets, termination notices or other written communications delivered by the insurer to the administrator for delivery to insured parties or covered individuals shall be delivered by the administrator promptly after receipt of instructions from the insurer to deliver them.

SOURCES: Laws, 1991, ch. 422, § 11, eff from and after July 1, 1991.

§ 83-18-23. Certificate of authority required to act as administrator; application; additional requirements; exceptions.

(1) No person shall act as, or offer to act as, or hold himself out to be an administrator in this state without a valid certificate of authority as an administrator issued by the commissioner.

(2) Applicants to be an administrator shall make an application to the commissioner upon a form to be furnished by the commissioner. The application shall include or be accompanied by the following information and documents:

(a) All basic organizational documents of the administrator, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and other applicable documents and all amendments to such documents;

(b) The bylaws, rules, regulations or similar documents regulating the internal affairs of the administrator;

(c) The names, addresses, official positions and professional qualifications of the individuals who are responsible for the conduct of affairs of the administrator; including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership or association; shareholders holding directly or indirectly ten percent (10%) or more of the voting securities of the administrator; and any other person who exercises control or influence over the affairs of the administrator;

(d) Annual financial statements or reports for the two (2) most recent years which prove that the applicant is solvent and such information as the commissioner may require in order to review the current financial condition of the applicant;

(e) A statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The plan must provide details setting forth the administrator's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping and underwriting;

(f) If the applicant will be managing the solicitation of new or renewal business, proof that it employs or has contracted with an agent licensed by this state for solicitation and taking of applications. Any applicant which intends to directly solicit insurance contracts or to otherwise act as an insurance agent must provide proof that it has a license as an insurance agent in this state;

(g) Such other pertinent information as may be required by the commissioner.

(3) The applicant shall make available for inspection by the commissioner copies of all contracts with insurers or other persons utilizing the services of the administrator.

(4) The commissioner may refuse to issue a certificate of authority if the commissioner determines that the administrator, or any individual responsible

for the conduct of affairs of the administrator as defined in subsection (2)(c) of this section, is not competent, trustworthy, financially responsible or of good personal and business reputation, or has had an insurance or an administrator license denied or revoked for cause by any state.

(5) A certificate of authority issued under this section shall remain valid, unless surrendered, suspended or revoked by the commissioner, for so long as the administrator continues in business in this state and remains in compliance with this chapter.

(6) An administrator is not required to hold a certificate of authority as an administrator in this state if all of the following conditions are met:

(a) The administrator is not soliciting business as an administrator in this state;

(b) In the case of any group policy or plan of insurance serviced by the administrator, the lesser of five percent (5%) or one hundred (100) certificate holders reside in this state.

(7) An administrator shall immediately notify the commissioner of any material change in its ownership, control or other fact or circumstance affecting its qualification for a certificate of authority in this state.

(8) No bonding shall be required by the commissioner of any administrator whose business is restricted solely to benefit plans which are either fully insured by an authorized insurer or which are bona fide employee benefit plans established by an employer or any employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974.

SOURCES: Laws, 1991, ch. 422, § 12, eff from and after July 1, 1991.

Cross References — Licensing requirements to act as administrator, see § 83-18-3.
Grounds for waiver of application requirements of this section, see § 83-18-25.

Federal Aspects — Employee Retirement Income Security Act of 1974, see generally 29 USCS § 1001 et seq.

§ 83-18-25. Waiver of application requirements where administrator certified in another state.

Upon request from an administrator, the commissioner may waive the application requirements of subsection (2) of Section 83-18-23 if the administrator has a valid certificate of authority as an administrator issued in a state which has standards for administrators that are at least as stringent as those contained in the model statute for third party administrators of the National Association of Insurance Commissioners.

SOURCES: Laws, 1991, ch. 422, § 13, eff from and after July 1, 1991.

§ 83-18-27. Annual report of administrators.

(1) Each administrator shall file an annual report for the preceding calendar year with the commissioner on or before March 1 of each year, or

within such extension of time therefor as the commissioner for good cause may grant. The report shall be in the form and contain such matters as the commissioner prescribes and shall be verified by at least two (2) officers of the administrator.

(2) The annual report shall include the complete names and addresses of all insurers with which the administrator had an agreement during the preceding fiscal year.

(3) At the time of filing its annual report, the administrator shall pay a filing fee as required by the commissioner.

SOURCES: Laws, 1991, ch. 422, § 14, eff from and after July 1, 1991.

§ 83-18-29. Suspension or revocation of certificate of authority; fine in lieu of suspension or revocation.

(1) The certificate of authority of an administrator shall be suspended or revoked if the commissioner finds that the administrator:

(a) Is in an unsound financial condition;

(b) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public; or

(c) Has failed to pay any judgment rendered against it in this state within sixty (60) days after the judgment has become final.

(2) The commissioner may, in his or her discretion, suspend or revoke the certificate of authority of an administrator if the commissioner finds that the administrator:

(a) Has violated any lawful rule or order of the commissioner or any provision of the insurance laws of this state;

(b) Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to such examination, when required by the commissioner;

(c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the administrator to secure full payment or settlement of such claims;

(d) Is affiliated with or under the same general management or interlocking directorate or ownership as another administrator or insurer which unlawfully transacts business in this state without having a certificate of authority;

(e) At any time fails to meet any qualification for which issuance of the certificate could have been refused had such failure then existed and been known to the department;

(f) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld; or

(g) Is under suspension or revocation in another state.

(3) The commissioner may, in his or her discretion and without advance notice or hearing thereon, immediately suspend the certificate of any administrator if the commissioner finds that one or more of the following circumstances exist:

(a) The administrator is insolvent or impaired;

(b) A proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the administrator has been commenced in any state;

(c) The financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state.

(4) If the commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this chapter, the commissioner may, in lieu of such suspension or revocation, impose a fine upon the administrator.

SOURCES: Laws, 1991, ch. 422, § 15, eff from and after July 1, 1991.

MANAGING GENERAL AGENTS ACT

SEC.

83-18-101. Short title.
83-18-103. Definitions.
83-18-105. License required to act as managing general agent; bonding requirement; rules and regulations.
83-18-107. Written contract required to place business with insurer; minimum contents of contract; claim files; termination or suspension of settlement authority; payment of interim profits to agent; prohibited acts of managing general agent.
83-18-109. Duties and responsibilities of insurer with respect to each managing general agent it does business with; acts of managing general agent considered acts of insurer.
83-18-111. Penalties for violations; judicial review; rights of policyholders and others not restricted.

§ 83-18-101. Short title.

Sections 83-18-101 through 83-18-111 may be cited as the Managing General Agents Act.

SOURCES: Laws, 1992, ch. 329, § 1, eff from and after July 1, 1992.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1809-1825.

§ 83-18-103. Definitions.

As used in Sections 83-18-101 through 83-18-111:

(a) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(b) "Insurer" means any person, firm, association or corporation duly licensed in this state as an insurance company as defined in Section 83-5-1, Mississippi Code of 1972.

(c) "Managing general agent" means any person, firm, association or corporation who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office) and acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one (1) quarter or year together with one or more of the following: (i) adjusts or pays claims in excess of an amount determined by the commissioner; or (ii) negotiates reinsurance on behalf of the insurer.

Notwithstanding the above, the following persons shall not be considered as a managing general agent for the purposes of Sections 83-18-101 through 83-18-111:

(i) An employee of the insurer;

(ii) A United States manager of the United States branch of an alien insurer;

(iii) An underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written; or

(iv) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

(d) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

SOURCES: Laws, 1992, ch. 329, § 2, eff from and after July 1, 1992.

Cross References — Insurer to review its books and records quarterly to determine if producer has become, by operation of this section, a managing general agent, see § 83-18-109.

§ 83-18-105. License required to act as managing general agent; bonding requirement; rules and regulations.

(1) No person, firm, association or corporation shall act in the capacity of a managing general agent with respect to risks located in this state for an

insurer licensed in this state unless such person is a licensed producer in this state.

(2) No person, firm, association or corporation shall act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed as a producer in this state (such license may be a nonresident license) under Sections 83-18-101 through 83-18-111.

(3) The commissioner may require a bond in an amount acceptable to him for the protection of the insurer. The commissioner may require the managing general agent to maintain an errors and omissions policy.

(4) The commissioner may adopt reasonable rules and regulations to implement Sections 83-18-101 through 83-18-111.

SOURCES: Laws, 1992, ch. 329, § 3, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1809-1825.

§ 83-18-107. Written contract required to place business with insurer; minimum contents of contract; claim files; termination or suspension of settlement authority; payment of interim profits to agent; prohibited acts of managing general agent.

(1) No person, firm, association or corporation acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of such responsibilities and which contains the following minimum provisions:

(a) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(b) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(c) All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in a bank which is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses.

(d) Separate records of business written by the managing general agent shall be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts and records of the managing general agent in a form usable to the commissioner.

(e) The contract may not be assigned in whole or part by the managing general agent.

(f) Appropriate underwriting guidelines including:

(i) The maximum annual premium volume;

(ii) The basis of the rates to be charged;

(iii) The types of risks which may be written;

(iv) Maximum limits of liability;

(v) Applicable exclusions;

(vi) Territorial limitations;

(vii) Policy cancellation provisions; and

(viii) The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and regulations.

(g) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(i) All claims must be reported to the company in a timely manner.

(ii) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:

(A) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;

(B) Involves a coverage dispute;

(C) May exceed the managing general agent's claims settlement authority;

(D) Is open for more than six (6) months; or

(E) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.

(h) Where electronic claims files are in existence, the contract must address the timely transmission of the data.

(2) All claim files shall be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer such files shall become the sole property of the insurer or its estate; the managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(3) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(4) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits shall not be paid to the managing general agent until one (1) year after they are earned

for property insurance business and five (5) years after they are earned on casualty business and not until the profits have been verified pursuant to Section 83-18-109.

(5) The managing general agent shall not:

(a) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

(b) Commit the insurer to participate in insurance or reinsurance syndicates;

(c) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which he is appointed;

(d) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(e) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

(f) Permit its subproducer to serve on the insurer's board of directors;

(g) Jointly employ an individual who is employed with the insurer; or

(h) Appoint a submanaging general agent.

SOURCES: Laws, 1992, ch. 329, § 4, eff from and after July 1, 1992.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in paragraph (a) of subsection (5). The word "faculative" was changed to "facultative" in two places. The Joint Committee ratified the correction at its December 3, 1996 meeting.

RESEARCH REFERENCES

ALR. Duty of liability insurer to initiate settlement negotiations. 51 A.L.R.5th 701.

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1809-1825.

§ 83-18-109. Duties and responsibilities of insurer with respect to each managing general agent it does business with; acts of managing general agent considered acts of insurer.

(1) The insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which it has done business.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of

loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

(3) The insurer shall periodically (at least semiannually) conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the managing general agent.

(5) Within thirty (30) days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of such appointment or termination to the commissioner. Notices of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act and any other information the commissioner may request.

(6) An insurer shall review its books and records each quarter to determine if any producer as defined by Section 83-18-103 has become, by operation of Section 83-18-103, a managing general agent as defined in that section. If the insurer determines that a producer has become a managing general agent pursuant to the above, the insurer shall promptly notify the producer and the commissioner of such determination and the insurer and producer must fully comply with the provisions of Sections 83-18-101 and 83-18-111 within thirty (30) days.

(7) An insurer shall not appoint to its board of directors an officer, director, employee, subproducer or controlling shareholder of its managing general agent. This subsection shall not apply to relationships governed by the Insurance Holding Company Act or, if applicable, the Broker Controlled Insurer Act.

(8) The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

SOURCES: Laws, 1992, ch. 329, § 5, eff from and after July 1, 1992.

Cross References — Payment of interim profits to managing general agent not to be made until profits have been verified pursuant to this section, see § 83-18-107.

RESEARCH REFERENCES

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1809-1825.

§ 83-18-111. Penalties for violations; judicial review; rights of policyholders and others not restricted.

(1) If the commissioner finds after a hearing conducted in accordance with Section 83-6-39, Mississippi Code of 1972, that any person has violated Sections 83-18-101 through 83-18-111, the commissioner may order:

(a) For each separate violation, a penalty in an amount not to exceed Five Hundred Dollars ($500.00);

(b) Revocation or suspension of the producer's license; and

(c) The managing general agent to reimburse the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of Sections 83-18-101 through 83-18-111 committed by the managing general agent.

(2) The decision, determination or order of the commissioner pursuant to subsection (1) shall be subject to judicial review pursuant to Section 83-6-41, Mississippi Code of 1972.

(3) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance law.

(4) Nothing contained in Sections 83-18-101 through 83-18-111 is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and auditors.

SOURCES: Laws, 1992, ch. 329, § 6, eff from and after July 1, 1992.

CHAPTER 19

Domestic Companies

General Provisions 83-19-1
Merger or Consolidation, or Exchange of Outstanding Stock, of Domestic Stock Companies 83-19-99
Regulation of Reinsurance 83-19-151
Reinsurance Intermediary Act 83-19-201

GENERAL PROVISIONS

Sec.
83-19-1. Classifications of insurance companies.
83-19-3. Insurance of apparatus.
83-19-5. Expiration of charters under special acts.
83-19-7. Expiration of charters under general insurance laws.
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83-19-11. Organization of insurance companies.
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83-19-75. Penalty for failure to report impairment of surplus.

83-19-77. Exceptions to surplus requirements.
83-19-79. “Equity security” defined.
83-19-81. Statements of ownership of equity securities.
83-19-83. Recovery of profit realized from certain purchase or sale of equity security.
83-19-85. Prohibition of certain sales of equity security.
83-19-87. Certain purchases or sales of equity securities excepted.
83-19-89. Certain arbitrage transactions excluded.
83-19-91. Solicitation of proxies, consents, or authorizations.
83-19-93. Transmission of security information.
83-19-95. Provisions inapplicable to certain equity securities.
83-19-97. Commissioner to make rules and regulations.

§ 83-19-1. Classifications of insurance companies.

Insurance companies may be formed for the following classifications:

Class 1. Fire and Casualty. —

(a) **Fire and Allied Lines.** — Coverage protecting against loss to real or personal property from damage caused by the peril of fire, lightning, windstorm and hail, sprinkler and water damage, smoke, explosion, riot, riot attending strike, civil commotion, aircraft, vehicle and business interruption caused by one (1) of the above.

(b) **Industrial Fire.** — Limited coverage protecting against loss to real or personal property from damage caused by the peril of fire, lightning, windstorm and hail, sprinkler and water damage, smoke, explosion, riot, riot attending strike, civil commotion, aircraft, vehicle, burglary, theft and business interruption caused by one (1) of the above.

(c) **Casualty/Liability.** — Coverage protecting the insured against legal liability resulting from negligence, carelessness or a failure to act causing property damage or personal injury to others. Coverage may include burglary and theft.

(d) **Fidelity.** — A bond covering an employer’s loss resulting from an employee’s dishonest act.

(e) **Surety.** — A three-party agreement where the insurer agrees to pay a second party (the obligee) or make complete an obligation in response to the default, acts or omissions of a third party (the principal).

(f) **Workers’ Compensation.** — Coverage for an employer’s liability for injuries, disability or death to persons in their employment, without regard to fault, as prescribed by state workers’ compensation laws.

(g) **Boiler and Machinery.** — Coverage for the failure of boilers, machinery and electrical equipment.

(h) **Plate Glass.** — Coverage for the cost of replacement and incidental cost of building glass due to breakage or application of chemicals to glass.

(i) **Aircraft.** — Coverage for aircraft (hull) and contents; aircraft owner’s and manufacturer’s liability to passengers, airports and other third parties.

(j) **Inland Marine.** — Coverage for inland transportation exposures, property in transit, held by a bailee, scheduled, bridges and tunnels.

(k) **Ocean Marine.** — Coverage for ocean and inland water transportation exposures; goods or cargoes; ships or hulls.

(*l*) **Automobile Physical Damage/Automobile Liability.** — Coverage protecting against loss to owner's vehicle, personal injury and damage to property of others.

(m) **Homeowners/Farmowners.** — A package policy covering real and personal property, liability and theft.

(n) **Guaranty.** — An indemnity contract under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee or indemnitee as a result of failure to perform a financial obligation.

(o) **Mortgage Guaranty.** — Coverage indemnifying a lender from loss when a borrower fails to meet required mortgage payments.

(p) **Title.** — Coverage protecting the insured against risk resulting from defective titles or invalidity or adverse claim to title.

(q) **Trip Accident and Baggage.** — Coverage protecting the insured against risk resulting from accidental death; loss or damage to personal effects carried as baggage in connection with transportation provided by a common carrier.

(r) **Legal.** — Coverage protecting the insured against the risk resulting from the cost of legal services.

(s) **Credit Property.** — Insurance against loss of or damage to personal property purchased through a credit transaction or used as collateral for a credit transaction.

Class 2. Life. —

(a) **Life.** — Insurance contract for the payment of endowments or annuities, or make and enter into such other contracts conditioned upon the continuance or cessation of human life.

(b) **Accident and Health.** — Individual or group policy or contract of insurance against loss resulting from sickness or bodily injury, including dental care expenses resulting from sickness or bodily injury, or death by accident, or accidental means, or both.

(c) **Credit Life, Credit Accident and Health.** — Insurance on the life of a debtor in connection with a specific loan or other credit transactions; insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(d) **Industrial Life, Industrial Accident and Health.** — Limited insurance coverage protecting the insured in case of death, bodily injury or disability.

(e) **Variable Contracts.** — Contract which provides for variable life insurance or annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer as to such contract.

(f) **Life (Burial).** — A limited life contract for payment of the burial expenses of the insured.

Class 3. Fraternal. —

(a) **Fraternal.** — Coverage for the mutual benefit of fraternal members and their beneficiaries and not for profit or which limits its membership to a secret fraternity having a lodge system and representative form of government. Benefits may be paid in case of death, disability, funeral expenses, monuments or tombstones.

(b) **Larger Fraternal.** — Coverage for the mutual benefit of larger fraternal members and their beneficiaries and not for profit or which limits its membership to a secret fraternity having a lodge system and representative form of government. Benefits may be paid in case of death, endowment, annuity, temporary or permanent disability; hospital, medical or nursing; funeral, monument or tombstone and such other benefits as authorized for life insurers. For purposes of this paragraph (b), "larger fraternal" means those fraternal societies that have more than Thirty Thousand Dollars ($30,000.00) in total annual written premiums.

Class 4. Burial. — Insurance coverage protecting the insured against the risk resulting from the cost of burial expenses.

SOURCES: Codes, 1892, § 2332; 1906, § 2576; Hemingway's 1917, § 5040; 1930, § 5144; 1942, § 5654; Laws, 1928, ch. 127; Laws, 1997, ch. 410, § 11; Laws, 2002, ch. 392, § 1; Laws, 2004, ch. 523, § 1; Laws, 2008, ch. 326, § 1; Laws, 2010, ch. 450, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment deleted former "Class 5. Home Warranty" from the end of the section; and made minor stylistic changes.

Cross References — Registration and examination of companies writing casualty insurance, ordinary life insurance or health and accident insurance, see §§ 83-6-1 et seq.

Capital required for various classes of companies, see § 83-19-31.

Investment of funds by domestic insurance companies, see § 83-19-51.

Kind of insurance authorized for mutual companies, see § 83-31-11.

Legal expense insurance, see §§ 83-49-1 et seq.

Application of venue provisions of §§ 83-19-1 et seq. to legal expense insurance plan sponsors, see § 83-49-33.

JUDICIAL DECISIONS

1. In general.

Policy including both death benefit and health and accident disability constituted "life insurance policy." Universal Life Ins. Co. v. State, 155 Miss. 358, 121 So. 849 (1929).

Held duty of insurer of animals to furnish form for making proof of loss in conformity with policy. Atlantic Horse Ins. Co. v. Nero, 108 Miss. 321, 66 So. 780 (1914).

Insured under accident policy, who had changed to more hazardous occupation and was killed while off duty, held entitled to only such indemnity as premium paid would purchase at rate charged for more hazardous occupation. Beane v. Continental Cas. Co., 106 Miss. 813, 64 So. 732 (1914).

Stipulation in employer's liability policy that no claim could be paid insured without written consent of insurer could be waived by parol. London Guarantee & Accident Co. v. Mississippi Cent. R. Co., 97 Miss. 165, 52 So. 787 (1910).

RESEARCH REFERENCES

Practice References. Business Law Monographs, Volume IN1 — Business Uses of Life Insurance (Matthew Bender).

Business Law Monographs, Volume IN2 — Casualty and Liability Insurance (Matthew Bender).

Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

ALR. What constitutes "upset" or "overturning" within provisions of property damage policy covering losses so caused. 8 A.L.R.2d 1433.

What constitutes "granary" within provisions of fire insurance policy covering articles therein. 10 A.L.R.2d 226.

What constitutes "farm use" within provision of insurance policy. 10 A.L.R.2d 674.

Damage to vehicle resulting from wind or other phenomenon of nature as within coverage of automobile insurance policy insuring against collision or upset. 14 A.L.R.2d 812.

Construction and application of provision of life or accident policy relating to aeronautics. 17 A.L.R.2d 1041.

Rent loss insurance. 17 A.L.R.2d 1226.

Construction of clause of automobile liability policy excluding coverage in case of "commercial" use. 18 A.L.R.2d 719.

Apportionment of losses among automobile liability insurers under policies containing pro rata clauses. 21 A.L.R.2d 611.

Recovery under automobile property damage policy expressly including or excluding collision damage, where vehicle strikes embankment, abutment, roadbed, or other part of highway. 23 A.L.R.2d 389.

Vehicles and operations covered by automobile dealer's collision insurance policy. 23 A.L.R.2d 796.

Scope of clause of insurance policy covering injuries sustained from being "accidentally thrown from" a vehicle. 24 A.L.R.2d 1454.

Construction in effect of clause in liability policy voiding policy while insured vehicles are being used more than a specified distance from principal garage. 29 A.L.R.2d 514.

Automobile liability insurance: conditional vendee of insured as within coverage of omnibus clause. 36 A.L.R.2d 673.

Construction and effect of provision in employee's fidelity bond requiring employer-insured to file "itemized" proof of claim or proof of loss with particulars. 37 A.L.R.2d 900.

Scope of clause of insurance policy covering injuries sustained while "in or on" or "in or upon" motor vehicle. 39 A.L.R.2d 952.

Measure of recovery by insured under automobile collision insurance policy. 43 A.L.R.2d 327.

Determination of amount payable on loss to growing crop under policy insuring against loss or injury. 20 A.L.R.3d 924.

What constitutes "vandalism" or "malicious mischief" within automobile comprehensive coverage policy. 23 A.L.R.3d 1259.

Theft insurance: coverage of expense of reward offered by insured, or other expense incurred in recovering stolen property. 46 A.L.R.3d 403.

Property insurance on aircraft: risks and losses covered. 48 A.L.R.3d 1120.

"Vehicle" or "land vehicle" within meaning of insurance policy provision defining risks covered or excepted. 65 A.L.R.3d 824.

Fidelity bond termination clause on taking over of insured by another business entity: construction and effect. 44 A.L.R.4th 1195.

Boiler and machinery insurance: risks and losses covered by policy or provision expressly covering boilers and machinery. 49 A.L.R.4th 336.

What constitutes "entering" or "alighting from" vehicle within meaning of insurance policy, or statute mandating insurance coverage. 59 A.L.R.4th 149.

Construction and effect of "rain insurance" policies insuring against rainfall on the date of concert, exhibition, game, or the like. 70 A.L.R.4th 1010.

Property damage insurance: what constitutes "contamination" within policy clause excluding coverage. 72 A.L.R.4th 633.

Liability of owner of wires, poles, or structures struck by aircraft for resulting injury or damage. 49 A.L.R.5th 659.

Liability for loss of hat, coat, or other property deposited by customer in place of business. 54 A.L.R.5th 393.

Am Jur. 43 Am. Jur. 2d, Insurance §§ 105, 106.

47 Am. Jur. Trials 411, Handling Fidelity Bond Claims.

5 Am. Jur. Proof of Facts 3d, Negligent Failure to Install or Maintain Smoke Alarm or Sprinkler System §§ 1 et seq.

CJS. 44 C.J.S., Insurance §§ 147, 148.

§ 83-19-3. Insurance of apparatus.

All insurance companies authorized to transact fire insurance business in this state may, in addition to the business which they are now authorized by law to do, insure sprinklers, pumps, and other apparatus erected or put in position for the purpose of extinguishing fires, against damage, loss, or injury resulting from accidental causes other than fire; and also insure any property which such companies are authorized to insure against loss or damage by fire against damage, loss, or injury by water or otherwise, resulting from the accidental breaking off or injury to sprinklers, pumps, or other apparatus arising from causes other than fire.

SOURCES: Codes, 1906, § 2577; Hemingway's 1917, § 5041; 1930, § 5145; 1942, § 5655; Laws, 1954, ch. 310.

RESEARCH REFERENCES

Am Jur. 44 Am. Jur. 2d, Insurance § 1435.

5 Am. Jur. Proof of Facts 3d, Negligent Failure to Install or Maintain Smoke Alarm or Sprinkler System §§ 1 et seq.

CJS. 45 C.J.S., Insurance § 1249.

§ 83-19-5. Expiration of charters under special acts.

Domestic insurance companies, incorporated by special acts, whose charters are subject to limitation of time shall, after such limitation expires, continue to be bodies corporate, subject to all general laws applicable to such companies. No domestic insurance company hereafter organized shall issue policies until, upon examination of the commissioner, his deputy, or examiner, it is found to have complied with the laws of the state, nor until it has obtained from the commissioner a certificate setting forth that fact and authorizing it to issue policies.

SOURCES: Codes, 1906, § 2572; Hemingway's 1917, § 5037; 1930, § 5141; 1942, § 5651.

Cross References — Capital stock requirement before issuance of policies, see § 83-19-33.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-19-7. Expiration of charters under general insurance laws.

Domestic insurance companies incorporated under the general insurance laws whose charters are subject to limitation of time and who shall, after such limitation expires, continue to do business for ninety (90) days after March 6, 1956, shall be deemed to have accepted an extension of the time of life of such insurance corporation to a full period of ninety-nine (99) years from the date of the original charter thereof.

Such insurance corporation shall continue in existence as a de jure corporation as fully and completely as if the charter thereof had been thus amended prior to the end of the original period of fifty (50) years.

Likewise, whenever the period of existence of a domestic insurance company heretofore created for a period of fifty (50) years shall expire hereafter, if such corporation shall continue to do business thereafter for a period of ninety (90) days, the same shall operate as an acceptance of an extension of time of the life of such insurance corporation to a full period of ninety-nine (99) years from the date of the original charter thereof, and such insurance corporation shall continue in existence as a de jure corporation as fully and completely as if the charter thereof had been thus amended prior to the end of the original period of fifty (50) years.

Provided, however, that the provisions of this section shall in no way, shape, form, or fashion abate or nullify any suit or claim of whatsoever kind or nature accrued prior to March 6, 1956.

SOURCES: Codes, 1942, § 5651.5; Laws, 1956, ch. 342, § 1.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 107.

CJS. 44 C.J.S., Insurance § 148.

§ 83-19-9. Powers.

Corporations created under the provisions of this chapter shall have all the powers and privileges enjoyed by corporations created under the general corporation laws of this state, and may issue shares of stock of different classes, within the limits fixed by law, and may fix the relative rights and liability of the holders of each class of stock.

SOURCES: Codes, 1906, § 2591; Hemingway's 1917, § 5055; 1930, § 5157; 1942, § 5667.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 105, 106.

CJS. 44 C.J.S., Insurance §§ 153-156.

§ 83-19-11. Organization of insurance companies.

The procedure for organizing such a corporation shall be as follows: The proposed incorporators, a majority of whom must be residents of the state and not less than three (3), shall subscribe articles of association setting forth their intention to form a corporation; its proposed name, which must be approved by the commissioner and must not so closely resemble the name of an existing corporation doing business under the laws of this state as to be likely to mislead the public; the class or classes of insurance it proposes to transact and on what business plan or principle; the place within the state of its location; and, if on the stock plan, the amount of its capital stock. The words "insurance company" must be a part of the title of any such corporation.

SOURCES: Codes, 1892, § 2333; 1906, § 2578; Hemingway's 1917, § 5042; 1930, § 5146; 1942, § 5656; Laws, 1997, ch. 410, § 12, eff from and after July 1, 1997.

Cross References — Organization of title insurance company, see §§ 83-15-1 et seq.

Certificate of authority of agent or organizer, see § 83-17-5.

For provisions relating to the change of domicile of a domestic or foreign insurer, see §§ 83-20-1 et seq.

JUDICIAL DECISIONS

1. In general.

Stockholder of domestic insurance corporation was entitled to mandamus to compel inspection of books and records of corporations, upon petition alleging that purpose of such request was "in order to ascertain and know how the affairs of the company are conducted and whether or not the capital of which he has contributed a share is being prudently and properly employed, and in order that he may protect the business and interest of said corporation and his interest as such stockholder," unless the executive officers of the corporation plead and prove as an affirmative defense that the stockholder is actuated by bad motives or that the inspection is not desired in order to obtain information germane to his interest as stockholder, but is for speculative purposes or to gratify idle curiosity, or out of spirit of hostility to the welfare of the corporation. Sanders v. Neely, 197 Miss. 66, 19 So. 2d 424 (1944).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 95 et seq.

CJS. 44 C.J.S., Insurance §§ 144 et seq.

§ 83-19-13. Bylaws.

Any such company may adopt bylaws for the conduct of its business not repugnant to law or to its charter, and shall therein provide for the election of a minimum of three (3) directors. The bylaws may provide for the division of its board of directors into two (2), three (3) or four (4) classes and the election thereof at its annual meetings in such manner as that the members of one (1) class only shall retire and their successors be chosen each year. Vacancies in any such class may be filled by election by the board for the unexpired term.

SOURCES: Codes, 1906, § 2573; Hemingway's 1917, § 5038; 1930, § 5142; 1942, § 5652; Laws, 1997, ch. 410, § 13, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 95 et seq.

CJS. 44 C.J.S., Insurance §§ 144 et seq.

§ 83-19-15. Organizational meeting.

The first meeting for the purpose of organization shall be called by a notice signed by one or more of the subscribers to the articles of association, stating the time, place, and purposes of the meeting, a copy whereof shall, seven (7) days at least before the appointed time, be given to each subscriber, or left at his usual place of business or residence, or duly mailed to his post office address. Whoever gives such notice shall make affidavit thereof, which shall include a copy of the notice and be entered upon the records of the corporation. At such first meeting, including any adjournment thereof, an organization shall be effected by the choice of a temporary clerk, who shall be sworn to correctly keep and record the proceedings of the meeting, by the adoption of bylaws, and by the election of directors and such other officers as the bylaws may require; but at such first meeting no person shall be elected director who has not signed the articles of association. The temporary clerk shall record the proceedings until and including the choice and qualification of the secretary. The directors so chosen shall elect a president, secretary, and other officers who, under the bylaws, they are authorized to choose. The offices of president and treasurer shall not be held by the same individual.

SOURCES: Codes, 1906, § 2579; Hemingway's 1917, § 5043; 1930, § 5147; 1942, § 5657; Laws, 1958, ch. 436, § 1; Laws, 1998, ch. 323, § 3, eff from and after July 1, 1998.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 95 et seq.

CJS. 44 C.J.S., Insurance §§ 144 et seq.

§ 83-19-16. Commissioner of Insurance to be notified of changes in officers or directors.

Every domestic insurer shall notify the Commissioner of Insurance in writing of any change in the officers or directors of the insurer either before or immediately after such change becomes effective. The notice shall include biographical affidavits on the new officers or directors in the format developed by the commissioner.

SOURCES: Laws, 1999, ch. 313, § 1, eff from and after July 1, 1999.

§ 83-19-17. Repealed.

Repealed by Laws, 1991, ch. 335, § 1, eff from and after July 1, 1991. [Codes, 1942, § 5657.1; Laws, 1958, ch. 436, § 2]

Editor's Note — Former § 83-19-17 set forth qualification for the offices of board chairman and president.

§ 83-19-19. Certificate of organization.

The president, secretary, and majority of the directors shall forthwith make, sign, and swear to a certificate setting forth a copy of the articles of association, with the names of the subscribers thereto, the date of the first meeting, and of any adjournment thereof, and shall submit such certificate and the records of the corporation to the insurance commissioner, who shall examine the same and may require such other evidence as he may deem necessary.

SOURCES: Codes, 1906, § 2579; Hemingway's 1917, § 5043; 1930, § 5147; 1942, § 5657; Laws, 1958, ch. 436, § 1.

Cross References — For provisions relating to the change of domicile of a domestic or foreign insurer, see §§ 83-20-1 et seq.

Articles of association of mutual company, see § 83-31-3.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 95.

CJS. 44 C.J.S., Insurance §§ 148, 167.

§ 83-19-21. License fees; deposit into Insurance Department Fund.

If it appears that the requirements of the law herein have been complied with, the commissioner shall collect a fee of Two Hundred Dollars ($200.00), to be paid into the Special Fund in the State Treasury designated as the "Insurance Department Fund" and shall certify the fact and his approval of the articles of association, by endorsement thereon. The commissioner shall also collect a fee of Fifty Dollars ($50.00) for any amendment filed thereon and such fee shall be deposited into the "Insurance Department Fund."

SOURCES: Codes, 1906, § 2580; Hemingway's 1917, § 5044; 1930, § 5148; 1942, § 5658; Laws, 1977, ch. 325; Laws, 1988, ch. 526, § 6; Laws, 1991, ch. 352 § 1, eff from and after passage (approved March 15, 1991).

Editor's Note — Section 13 of ch. 526, Laws of 1988, provides as follows:

"SECTION 13. The commissioner may, after notice and hearing, issue rules and regulations that he deems necessary to effectuate the purposes of this act or to eliminate devices or plans designed to avoid or render ineffective the provisions of this act. The commissioner may require such information as is reasonably necessary for the enforcement of this act. All rules and regulations adopted and promulgated pursuant to this act shall be subject to the provisions of the Mississippi Administrative Procedures Law as provided in Section 25-43-1 et seq. [now 25-43-1.101 et seq.], Mississippi Code of 1972."

Cross References — Authority to increase or reduce capital stock, see §§ 83-19-61, 83-19-63.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

CJS. 44 C.J.S., Insurance §§ 118-120.

§ 83-19-23. Repealed.

Repealed by Laws, 1997, ch. 410, § 24, eff from and after July 1, 1997.

[Codes, 1906, § 2581; Hemingway's 1917, § 5045; 1930, § 5149; 1942, § 5659]

Editor's Note — Former § 83-19-23 prescribed the form and filing requirements of certificates of authority.

§ 83-19-25. Repealed.

Repealed by Laws, 1999, ch. 316, § 1, eff from and after July 1, 1999.

[Codes, 1942, § 5657.2; Laws, 1958, ch. 436, § 3]

Editor's Note — Former § 83-19-25 related to salaries of nonresident officers and employees.

§ 83-19-27. Examination of financial ability, condition, and affairs.

It shall be the duty of the commissioner of insurance of this state to make an examination of the financial ability, condition, and affairs of each domestic insurance company of this state, within twelve (12) months from the date upon which such domestic insurance company commences to do business in this state, and thereafter regular examinations of the financial ability, condition, and affairs of such domestic insurance companies shall be made as herein provided, and is now provided.

SOURCES: Codes, 1942, § 5659.5; Laws, 1956, ch. 331; Laws, 1958, ch. 437, § 1.

Cross References — Audit of annual financial statements of insurers, see §§ 83-5-101 et seq.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-19-29. New companies to file financial statement each quarter for two years.

It shall be the further duty of the Commissioner of Insurance of this state to require each domestic insurance company to file with the Department of Insurance a sworn financial statement of the company each quarter after it commences to do business, for a period of two (2) years. The statement shall be filed on and in accordance with the NAIC Quarterly Statement Blank and Instructions as well as the NAIC Accounting Practices and Procedures Manual. After the expiration of the two-year period, the annual statement otherwise required by statute will be sufficient unless the Commissioner of Insurance deems it advisable to require a more frequent filing of a financial statement.

SOURCES: Codes, 1942, § 5659.7; Laws, 1958, ch. 437, § 2; Laws, 2003, ch. 384, § 1, eff from and after July 1, 2003.

Cross References — Audit of annual financial statements of insurers, see §§ 83-5-101 et seq.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance § 96.

§ 83-19-31. Capital required for various classes of companies.

(1) No corporation so formed shall transact any other business than that specified in its charter and articles of association. Companies so formed must meet the following capital and surplus requirements:

(a) Single-line companies so formed to write a classification listed in paragraphs (a) through (n) in Section 27-15-83, the minimum capital requirement shall be Four Hundred Thousand Dollars ($400,000.00) and the surplus shall be a minimum of Six Hundred Thousand Dollars ($600,000.00).

(b) Multi-line companies so formed to write a combination of the classifications listed in paragraphs (a) through (n) in Section 27-15-83, the minimum capital requirement shall be Six Hundred Thousand Dollars ($600,000.00) and the surplus shall be a minimum of Nine Hundred Thousand Dollars ($900,000.00).

(c) Companies so formed for the purpose of transacting the business of life insurance on the industrial plan may organize with a minimum capital of One Hundred Thousand Dollars ($100,000.00) and a minimum surplus of Fifty Thousand Dollars ($50,000.00).

An industrial life insurer shall be limited to the following:

1. A life insurance policy, in the aggregate value of Five Thousand Dollars ($5,000.00) in death benefits, exclusive of multiple indemnity benefits.

2. A disability policy in the aggregate benefits of Sixty Dollars ($60.00) per week.

3. A policy providing benefits for dismembered and broken limbs and/or loss of eyesight in the aggregate of Five Thousand Dollars ($5,000.00) per policy year.

4. A policy which provides benefits for the payment for or furnishing of hospitalization, drugs, attending physicians and surgical costs in the aggregate of Three Thousand Five Hundred Dollars ($3,500.00) per policy year.

(d) All mutual and reciprocal companies shall possess at the time of initial license and maintain thereafter a surplus, after deductions for services, in an amount equal to the capital and surplus requirements of a stock company writing similar lines of insurance.

(e) If at any time the surplus of such domestic company or association shall be less than the minimum surplus noted above, such company or association shall be considered impaired; and it shall be the duty of the officers of such company or association to report any such impairment of surplus to the State Commissioner of Insurance in writing within ten (10) days after such impairment occurs. When any such impairment is reported, or if the Commissioner of Insurance should determine that the company is operating in an impaired condition, the commissioner may suspend the certificate of authority and license of such domestic insurance company or association to do business in this state until such company shall raise or increase its surplus to the minimum amount required herein.

(2) Any domestic company qualifying under the foregoing sections shall deposit with the State Treasurer fifty percent (50%) of its capital stock, either in cash or in such bonds or securities in which such company is authorized by law to invest its funds. Upon such deposit and evidence, by affidavit or otherwise, satisfactory to the Insurance Commissioner that the capital and surplus is all paid in and that the company is the actual and unqualified owner of the securities representing the paid-up capital and surplus, he shall issue to such company his certificate authorizing it to transact business in this state.

The provisions of this section as to the minimum requirements as to paid-up capital stock and cash surplus shall not become effective until January 1, 1988, concerning any domestic company which was authorized to do business and was writing business in this state on July 1, 1985.

Notwithstanding any other provision of law, the securities qualified for deposit under this section may be deposited with a clearing corporation or held in the Federal Reserve book-entry system. Securities deposited with a clearing corporation or held in the Federal Reserve book-entry system and used to meet the deposit requirements set forth in this section shall be under the control of the Insurance Commissioner and shall not be withdrawn by the insurance company without the approval of the Insurance Commissioner. Any insurance company holding securities in such manner shall provide to the Insurance Commissioner evidence issued by its custodian or member bank through which such insurance company has deposited such securities in a clearing corporation or through which such securities are held in the Federal Reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank, and that the records of the custodian, other participant or member bank reflect that such securities are held subject to the order of the Insurance Commissioner.

(3) No insurance company, including any mutual insurance company, organized under the laws of this state and transacting business in this state shall expose itself to loss on any one (1) risk or hazard to an amount exceeding ten percent (10%) of its paid-up capital and surplus unless the excess is reinsured in some other company duly authorized to transact similar business in this state or as otherwise provided in the insurance code. For purposes of this subsection, the terms "risk" and "hazard" apply to the subject matter of any one (1) insurance policy and not to any one (1) peril.

(4) The Commissioner of Insurance may require additional capital and surplus based on the type, nature or volume of business transacted.

SOURCES: Codes, 1892, § 2334; 1906, § 2582; Hemingway's 1917, § 5046; 1930, § 5150; 1942, § 5660; Laws, 1956, ch. 336, § 1; Laws, 1958, ch. 449; Laws, 1960, ch. 368; Laws, 1962, ch. 455, § 1; Laws, 1972, ch. 445, § 1, 1976, ch. 402, § 1; Laws, 1982, chs. 404, § 1; 500, § 1; Laws, 1985, ch. 401; Laws, 1989, ch. 442, § 1; Laws, 1992, ch. 425, § 1; Laws, 1998, ch. 323, § 4; Laws, 1999, ch. 475, § 2; Laws, 2001, ch. 412, § 5, eff from and after July 1, 2001.

Cross References — Factors to be considered in determining reasonableness of surplus of companies writing casualty, ordinary life or health and accident insurance, see § 83-6-23.

Capital required for title insurance company, see § 83-15-5.

Purposes for the organization of insurance companies, see § 83-19-1.

Transaction of business upon increased or reduced capital, see § 83-19-59.

Utilization of modern systems such as clearing corporations and the Federal Reserve book-entry system for the deposit of securities without physical delivery, see §§ 83-67-1 et seq.

JUDICIAL DECISIONS

1. In general.

Section 97-1-1, in conjunction with § 83-19-31 and [former] § 83-19-73, is not void for vagueness due to the lack of written accounting procedures to be used to determine the minimum capital and surplus requirements of an insurance company. Gardner v. State, 531 So. 2d 805 (Miss. 1988).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 72.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance, Form 20 (petition for mandamus to compel issuance certificate of authority where company complied with capitalization requirement established by statute).

CJS. 44 C.J.S., Insurance §§ 121-123.

§ 83-19-33. Capital stock payment.

The capital stock shall be paid in cash within twelve (12) months from the date of charter or certificate of organization, unless the commissioner of insurance on proper showing shall grant additional time for the completion of the sale and payment of said stock; and no certificate of full shares shall be issued until paid for in full. No policies shall be issued until an amount equal to the minimum required by law shall have been paid into the company and a license to engage in business has been issued by the commissioner of insurance.

SOURCES: Codes, 1906, § 2583; Hemingway's 1917, § 5047; 1930, § 5151; 1942, § 5661; Laws, 1924, ch. 192; Laws, 1958, ch. 438, § 1.

Cross References — Certificate of authority to issue policies, see § 83-19-5.

JUDICIAL DECISIONS

1. In general.

Fact that one is stockholder in fire company does not affect his right to recover on policy. Mississippi Fire Ass'n v. Stein, 88 Miss. 499, 41 So. 66 (1906).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 108.

CJS. 44 C.J.S., Insurance § 149.

§ 83-19-35. Commissioner to approve the price per share of stock.

The commissioner of insurance shall approve the price per share of stock to be issued by a domestic insurance company upon the filing of a prospectus or brochure by the company. Said prospectus or brochure shall show the total number of shares authorized, and the number of shares to be issued at a specified price, and shall contain in large print the wording "This stock is purely speculative." The above provisions shall also apply to any stock subscribed to under escrow agreement at any organizational meeting.

SOURCES: Codes, 1942, § 5661-01; Laws, 1958, ch. 438, § 2, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 108.

CJS. 44 C.J.S., Insurance § 149.

§ 83-19-37. Stock sale.

No stock sale shall be approved at a par value of less than One Dollar ($1.00) per share, and no stock sale shall be approved in which commissions paid to salesmen, agents, or brokers exceed ten percent (10%) of the asking price of the stock.

SOURCES: Codes, 1942, § 5661-02; Laws, 1958, ch. 438, § 3, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 76, 108.

CJS. 44 C.J.S., Insurance §§ 138, 149.

§ 83-19-39. Escrow deposits.

The par value of each share and fifty percent (50%) of the amount allocated to surplus shall be deposited in escrow in a bank in the State of Mississippi, jointly payable to the commissioner of insurance and the company, which deposit shall remain in escrow until sufficient funds are raised to permit the licensing of the company, or returned to the stockholders in lieu of such licensing.

SOURCES: Codes, 1942, § 5661-03; Laws, 1958, ch. 438, § 4, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am Jur. 28 Am. Jur. 2d, Escrow §§ 1, 2 et seq.

§ 83-19-41. No stock to be placed on option.

The commissioner of insurance shall examine the charter and bylaws of each company applying for license to do business under the domestic insurance company laws to determine that no stock is placed on option. It shall be unlawful for any domestic insurance company to declare a stock dividend within five (5) years from date of incorporation.

SOURCES: Codes, 1942, § 5661-04; Laws, 1958, ch. 438, § 5, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 108.

CJS. 44 C.J.S., Insurance § 149.

§ 83-19-43. Qualification of certain stock sales with securities exchange commission.

Any insurance company formed under the laws of the State of Mississippi, whose organizers or incorporators consist of one or more nonresidents of the State of Mississippi, shall, in addition to having the approval of the commissioner of insurance of all stock sales, likewise qualify the sale of stock in such company with the securities exchange commission.

SOURCES: Codes, 1942, § 5661-05; Laws, 1958, ch. 438, § 6, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 108.

CJS. 44 C.J.S., Insurance § 149.

§ 83-19-45. Organization through sale of stock in holding company prohibited.

No insurance company shall be organized through the sale of stock in a holding or investment company.

SOURCES: Codes, 1942, § 5661-06; Laws, 1958, ch. 438, § 7, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 108.

CJS. 44 C.J.S., Insurance § 149.

§ 83-19-47. Violation to invalidate organization of company.

Any violation of the provisions in Sections 83-19-33 through 83-19-45 shall invalidate the organization of any proposed domestic insurance company, either prior to or following its licensing by the insurance department.

SOURCES: Codes, 1942, § 5661-07; Laws, 1958, ch. 438, § 8, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

§ 83-19-49. License fees.

The licensing fees applicable to domestic insurance companies and stock salesmen shall be as provided in Section 83-5-19, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 5661-08; Laws, 1958, ch. 438, § 9, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 68.

CJS. 44 C.J.S., Insurance §§ 118-120, 131, 132.

§ 83-19-51. Investment of funds by domestic insurance companies.

(1) A domestic insurance company may invest its capital, surplus, and other funds, or certain parts thereof, in the following:

(a) Bonds or other evidence of indebtedness of the United States, of any state of the United States, of the Dominion of Canada, or of any province thereof.

(b) Bonds or other evidence of indebtedness of any county, city, town, village, school district, municipal district, or other civil district within the United States or the Dominion of Canada.

(c) Bonds or notes secured by mortgages or deeds of trust upon unencumbered real estate in the United States or Dominion of Canada worth at least thirty-three and one-third percent (33-⅓%) more than the amount loaned thereon, and may also loan upon the security of improved unencumbered real property in any state, provided the security be eligible for insurance and be insured under provisions of the National Housing Act and any amendments thereto. Where improvements on the land constitute a part of the value on which the loan is made, the improvements shall be insured against fire and tornado for the benefit of the mortgagee, in an amount not less than the difference between seventy-five percent (75%) of the value of the land and the amount of the loan. For the purposes of this paragraph (c), real estate shall not be deemed to be encumbered within the meaning of this section by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls, or other comparable or similar instruments, rights, restrictions, and covenants, nor by reason of building restrictions or restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner, provided such lease and the notes for rent given thereunder be assigned by the lessor to the company.

(d) Bonds, notes, or other evidences of indebtedness which are secured by mortgages, security deeds, vendor's liens, or deeds of trust upon leasehold estates having an unexpired term of twenty-five (25) years or longer in improved unencumbered real estate in the United States worth at least thirty-three and one-third percent (33-⅓%) more than the amount loaned thereon. For the purposes of this paragraph (d), the real estate on which such leasehold estate exists shall not be deemed to be encumbered within the meaning of this section by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls, or other comparable or similar instruments, rights, restrictions, and covenants, nor by reason of building restrictions or restrictive covenants.

(e) In bankers' acceptances and bills of exchange of the kinds and maturities made eligible by law for rediscount with Federal Reserve banks, provided that the same are accepted by a bank or trust company incorporated under the laws of the United States, of this commonwealth, or by any other bank or trust company which is a member of the Federal Reserve system. However, not more than ten percent (10%) of the admitted assets shall be so invested.

(f) Stock in Federal Home Loan Bank, or bonds, debentures, notes, or other evidences of indebtedness, or the preferred or guaranteed stock or shares of any solvent institution created or existing under the laws of the United States, or any state thereof. No life insurance company shall invest in its own stock and may not invest more than ten percent (10%) of its total assets in the preferred or guaranteed stock or bonds of any one (1) corporation, as above described.

(g) Bonds, debentures, notes or other evidences of indebtedness, or the preferred or guaranteed stock or shares issued by or guaranteed by any solvent institution domiciled outside the United States or created under the laws of a nation other than the United States; however, no insurance company shall invest more than twenty percent (20%) of its total assets in foreign investments as described herein. No life insurance company shall invest more than ten percent (10%) of its total assets in the evidences of indebtedness of any one (1) corporation, as above described. After notice and hearing, and for good cause shown, the commissioner shall have the authority to disallow any investment by a domestic insurance company in any institution located in a foreign nation.

(h) Loans upon the pledge of any of the securities herein authorized.

(i) In adequately secured equipment trust certificates or other adequately secured instruments evidencing an interest in equipment wholly or partly within the United States, and a right to receive determined portions or rental, purchase or other fixed obligatory payments for the use or purchase of such equipment, provided that not more than five percent (5%) of its total assets be so invested.

(j) The common capital stock of any bank or trust company which is a member of the Federal Deposit Insurance Corporation and has earned no less than five percent (5%) on its total capital accounts for each of the preceding three (3) years, not to exceed, however, ten percent (10%) of the actually issued and outstanding common capital stock of any one (1) such bank or trust company; or a building and loan association which is a member of the Federal Savings and Loan Insurance Association and has earned no less than five percent (5%) on its total capital accounts for each of the preceding three (3) years, not to exceed, however, ten percent (10%) of the actually issued and outstanding common capital stock of any one (1) such building and loan association; provided that not more than five percent (5%) of the assets of such domestic company shall be so invested at any time in common stock of either banks or trust companies, or building and loan associations, or in an aggregate of the two (2).

Provided, however, no domestic insurance company may acquire common stock in any bank or building and loan association in this state when such acquisition will cause the aggregate of such stock held by any domestic insurance company or companies to exceed fifteen percent (15%) of the common stock of such bank or building and loan association.

(k) A life insurance company may also purchase for its own benefit any policy of life insurance or other obligation of the company and claims of the holders thereof, and may lend to the holders of its life insurance policies sums not exceeding in any case the reserve value of the policy at the time the loan is made and, for the payment of any such loan, the policy and all profits thereon shall be pledged.

(*l*) A company doing business in a foreign country may invest the funds required to meet its obligations in such country and, in conformity to the laws thereof, in the same kinds of securities in such foreign country that such company is allowed by law to invest in the United States.

(m) Bonds or other evidences of indebtedness of the Inter-American Development Bank.

(n) Cash or deposits in checking or savings accounts, under certificates of deposit or in any other form, or other certificates or evidence of indebtedness from solvent banks and trust companies and in savings accounts, certificates of deposit or similar certificates or evidences of deposits in solvent savings and loan associations and building and loan associations.

(o) Construction loans, repurchase agreement transactions, standby mortgage loan commitments, electronic, computer or data processing equipment investments, financial risk limiting and balancing transactions, including put and call options purchased solely for legitimate financial futures hedging, nonspeculative purposes if these transactions are traded upon a contract market designated and regulated by a federal agency.

(p) Bonds or other evidences of indebtedness of the African Development Bank.

(q) Any other investment expressly authorized by law.

(2) Any domestic company may invest an amount not to exceed ten percent (10%) of its total admitted assets and to further increase such authority by an additional four percent (4%) provided such four percent (4%) investments are made in the State of Mississippi without regard to the limitations of any other subsection of this section or of any other act or acts regulating or governing the investments of domestic companies.

(3) Any domestic company may invest an amount not to exceed ten percent (10%) of its admitted assets in common shares of solvent corporations incorporated under the laws of any of the states among the United States of America or created under the laws of a nation other than the United States without regard to the restrictions in, and notwithstanding the provisions of, any other subsection of this section or of any other act or acts regulating or governing the investments of domestic companies. No life insurance company shall invest more than five percent (5%) of its admitted assets in common shares of any one (1) corporation as hereinbefore provided. After notice and hearing, and for good cause shown, the commissioner shall have the authority to disallow any investment by a domestic insurance company in any institution located in a foreign nation.

Conflict of interest. Provided, however, no domestic insurance company shall under this section acquire common stock in any company where the officers or directors of the insurance company, individually or collectively, hold an interest in excess of ten percent (10%) of the company in which the common stock is acquired. For the purpose of this limitation, interest is defined as actual ownership, ownership in the name of a trustee, ownership in the name of a relative within the third degree, ownership in the name of an owned or controlled corporation or business, or ownership in the form of an option.

Provided further, no officer or director of the insurance company shall either directly or indirectly derive any profit or revenue from stock purchases under the above subsection, either in the form of commissions, brokerage, or the outright sale of shares of stock to the insurance company.

(4) No amount at any time shall be loaned from any funds or investments described herein to any stockholder, officer or director of the company; provided, however, this subsection shall not prohibit any person from obtaining a loan or exercising other contractual rights pursuant to the provisions of a policy or contract for insurance to which the person is a party or otherwise has the legal right to exercise such contractual rights.

(5) Notwithstanding the provisions of this section, the commissioner may, after notice and hearing, order a company to limit or withdraw from certain investments, or discontinue certain investment practices, to the extent that the commissioner finds that such investments or investment practices endanger the solvency of the company.

(6) No loan or investment, except loans on the security of life insurance policies, shall be made by any such company unless the same shall have been authorized by the board of directors or by a committee thereof charged with the duty of supervising loans or investments, and no company shall enter into any agreement to withhold from sale any of its securities or property; but the disposition of its assets shall at all times be within the control of the company.

Nothing in this law shall prohibit a company from accepting in good faith, to protect its interest, securities or property other than herein referred to, in payment of or to secure debts due or to become due the company.

(7) Nothing in this section shall be construed as affecting any investment existing on April 27, 1966; and this section shall not repeal Sections 43-33-301 through 43-33-307 of the Mississippi Code of 1972.

SOURCES: Codes, 1906, § 2583; Hemingway's 1917, § 5047; 1930, § 5152; 1942, § 5662; Laws, 1924, ch. 192; Laws, 1940, ch. 206; Laws, 1954, ch. 309, §§ 1-3; Laws, 1958, ch. 439; Laws, 1962, ch. 457, §§ 1-6; ch. 458; Laws, 1964, ch. 470, §§ 1-6; Laws, 1966, ch. 522, §§ 1-5. 1984, ch. 329; Laws, 1985, ch. 483; Laws, 1988, ch. 370; Laws, 1992, ch. 340, § 1; Laws, 1997, ch. 325, § 1; Laws, 1999, ch. 475, § 1; Laws, 2003, ch. 414, § 1; Laws, 2010, ch. 451, § 1, eff from and after passage (approved Mar. 31, 2010.)

Amendment Notes — The 2010 amendment added (1)(g); rewrote (1)(f) and the first paragraph of (3); and made minor stylistic changes.

Cross References — Bonds of county or regional railroad authorities as legal investments, see § 19-29-37.

Provisions on insured loans, see §§ 43-33-101 et seq.

Authority to invest in evidences of indebtedness insured by Federal Housing Administrator and others, see § 43-33-303.

Authority to invest in bonds issued by approval of Agricultural and Industrial Board, see § 57-3-31.

Investments in county industrial development authority bonds, see § 57-31-27.

Notes issued by municipalities to finance industrial enterprise projects as legal investments for insurance companies, see § 57-41-11.

Authority to invest in bonds issued under State Ports and Harbors Law, see § 59-5-63.

Authority to invest in farm credit securities, see § 75-69-7.

Stock of subsidiary corporation of insurer not to be valued at amount in excess of net value based upon assets eligible under this section, see § 83-5-117.

Investments by domestic insurers in securities of subsidiaries not subject to restrictions in this section, see § 83-6-2.

Reserve liabilities of life insurance companies, see §§ 83-7-21 et seq.

Commissioner's power to act as receiver, see § 83-23-1.

Powers and duties of commissioner in effectuating insurance guaranty laws, see §§ 83-23-119, 83-23-221.

Investment of funds by fraternal societies, see § 83-29-17.

Investment of funds of nonprofit dental service corporations, see § 83-43-23.

Authority to invest in obligations of Tennessee Valley Authority, see § 91-13-11.

Federal Aspects — Federal Home Loan Banks, see 12 USCS §§ 1421 et seq.

National Housing Act, see 12 USCS §§ 1701 et seq.

JUDICIAL DECISIONS

1. In general.

Interest-bearing securities and solvent credits acquired by domestic insurance corporation in making loans held exempt from ad valorem taxes. Miller v. Lamar Life Ins. Co., 158 Miss. 753, 131 So. 282 (1930).

Mortgagee relying on waiver of first lien by president of insurance company could presume that action of president was act of corporation. McDowell v. Federal Land Bank, 156 Miss. 820, 127 So. 288 (1930).

Neither receiver nor corporation could avail of ultra vires act of president in executing waiver of first lien. McDowell v. Federal Land Bank, 156 Miss. 820, 127 So. 288 (1930).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 105, 106.

CJS. 44 C.J.S., Insurance §§ 154-156.

§ 83-19-53. Investment to finance buildings for General Services Administration.

A domestic insurance company may invest its funds in financing the construction of public buildings and improvements for the use of the United States of America through the General Services Administration pursuant to the provisions of Title I, Public Law 519, 83rd Congress, known as the Public Buildings Purchase Contract Act of 1954 (68 Stat. 518), as amended by Public Law 150, 84th Congress (69 Stat. 297), and Public Law 667, 84th Congress (70 Stat. 510), which amends the Public Buildings Act of 1949, Public Law 105, 81st Congress, approved June 16, 1949 (63 Stat. 176), and all laws amendatory thereof or supplemental thereto; and to that end may acquire, hold and convey real estate and other property and make and enter into any and all contracts and agreements deemed necessary or advisable by it to carry out the purposes of this section and protect the interests of such company; provided, however, that repayment of the loans and advances for such construction, with interest thereon, shall be obligations of or guaranteed by the United States of America.

This section is cumulative to and shall not repeal any other statutes of this state dealing with the investment of funds or the acquisition, holding, and conveyance of property by a domestic insurance company.

SOURCES: Codes, 1942, § 5662.5; Laws, 1958, ch. 451, §§ 1, 2.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 105, 106.

CJS. 44 C.J.S., Insurance §§ 154-156.

§ 83-19-55. Real estate holdings.

A domestic company may acquire, hold, and convey real estate for the purposes and in the manner only following:

(a) The buildings in which it has its principal office and the land on which it stands.

(b) Such as shall be requisite for its convenient accommodation in the transaction, enlargement, and advancement of its business.

(c) Such as shall have been acquired for the accommodation of its business.

(d) Such real estate as it may purchase or hold for the production of income. It may improve or otherwise develop in any manner such real estate and the improvements thereon, and may own, maintain, manage, collect and receive income from, and sell or convey the same. Said real estate described in paragraphs (a), (b), (c) and (d) shall not exceed in value, as evidenced by its original purchase price including any encumbrances thereon, fifteen percent (15%) of the assets of such company, unless the company file with the commissioner application for permission to exceed said proportion, stating its reasons therefor, and obtain his certificate approving the same.

(e) Such as shall have been mortgaged to it in good faith, by way of security for loans previously contracted for money due.

(f) Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(g) Such as it shall have purchased at sales on judgments, decrees or mortgages obtained or made for debts.

All real estate specified in paragraphs (c), (e), (f) and (g) of this section shall be sold by the company and disposed of within five (5) years after it shall have acquired the title to the same, unless the company obtain the certificate of the commissioner that its interests will suffer materially from a forced sale thereof, in which event the time for the sale may be extended to such time as the commissioner shall direct in such certificate. The company may, however, elect to consider property acquired as specified in paragraphs (c), (e), (f) and (g) as real estate for the production of income, as defined in paragraph (d). Such election shall be evidenced by a written notice thereof to the commissioner, and, where such election is made, property so acquired shall be subject to the limitation of fifteen percent (15%) of the company's assets, as defined in paragraph (d), and shall not be required to be sold within said five-year period.

SOURCES: Codes, 1892, § 2331; 1906, § 2574; Hemingway's 1917, § 5039; 1930, § 5143; 1942, § 5653; Laws, 1946, ch. 362, § 1.

Cross References — Purchase of public lands, see § 29-1-75.
Real estate holdings of banks, see § 81-5-87.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 105, 106.

CJS. 44 C.J.S., Insurance §§ 154-156.

§ 83-19-57. Capital impairment.

When the net assets of a company do not amount to more than three-fourths (¾) of its original paid-up capital, it may make good its capital to the original amount by assessment of its stock, and shall not write any new business until same is made good or reduced to minimum amount required by this chapter. If such company shall not, within three (3) months after notice from the commissioner to that effect, make good its capital as aforesaid or reduce the same, its authority to transact new business of insurance will be revoked by said commissioner.

SOURCES: Codes, 1906, § 2584; Hemingway's 1917, § 5048; 1930, § 5153; 1942, § 5663.

Cross References — Suspension or revocation of certificate of authority for unsound condition, see § 83-1-29.
Revocation of license for unsound condition, see § 83-5-17.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 108.

CJS. 44 C.J.S., Insurance § 149.

§ 83-19-59. Application to increase or reduce capital stock.

The commissioner shall, upon application, examine the proceedings of domestic companies to increase or reduce their capital stock and, when found conformable to law shall indorse certificates thereof and shall issue certificates of authority to such company to transact business upon such increased or reduced capital. He shall not allow stockholders' obligations of any description as part of the assets or capital of any insurance company unless the same are secured by competent collateral.

SOURCES: Codes, 1880, § 1087; 1892, § 2338; 1906, § 2568; Hemingway's 1917, § 5033; 1930, § 5140; 1942, § 5650.

Cross References — Capital required for various classes of companies, see § 83-19-31.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 108.

CJS. 44 C.J.S., Insurance § 149.

§ 83-19-61. Increase of capital stock.

Any such company having a paid-up capital, as required by law, may increase its capital stock by a vote of its stockholders, and issue certificates for the additional shares, which may be paid for in cash or in such installments as the company may determine. Such certificates shall show on their face the amount actually paid (unless paid in full), and no capital shall be advertised except the amount actually paid. The company shall, within thirty (30) days after authorizing such increase of capital, report the fact to the commissioner, setting forth the amount of such increase and the amount of same to be paid in cash. If the commissioner finds that the facts conform to the law, he shall indorse his approval thereon; and upon filing such certificate so indorsed with the secretary of state and paying a fee of Five Dollars ($5.00) for filing and recording the same, the company may continue to dispose of such authorized increase as has not been disposed of, and to transact business upon the capital as thus increased. As soon as the whole of such authorized increase has been placed or disposed of, the company shall report the fact to the commissioner; and if not disposed of in six (6) months from the date of the first report herein required, a report shall then be made of the transactions to that date.

SOURCES: Codes, 1906, § 2585; Hemingway's 1917, § 5049; 1930, § 5154; 1942, § 5664.

Cross References — Penalty for publishing amount of capital not paid in cash, see § 83-5-9.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 108.

CJS. 44 C.J.S., Insurance § 149.

§ 83-19-63. Reduction of capital stock.

When the capital stock of a company is impaired, such company may, upon a vote of the majority of the stock represented at a meeting called for that purpose, reduce its capital stock and the number of shares thereof to an amount not less than the minimum sum required by law. No part of its assets and property shall be distributed to its stockholders, but shall remain as surplus fund. Within ten (10) days after such meeting, the company shall submit to the commissioner a certificate setting forth the proceedings thereof, the amount of such reduction, and the assets and liabilities of the company, signed and sworn to by its president, secretary, and a majority of its directors. The commissioner shall examine the facts in the case and, if the same conform to law and in his judgment the proposed reduction may be made without prejudice to the public, he shall indorse his approval upon the certificate. Upon filing the certificate so indorsed in the office of the secretary of state and paying a fee of Five Dollars ($5.00) for the filing and recording thereof, the company may transact business upon the basis of such reduced capital as though the same were its original capital. Its charter shall be deemed to be amended to conform thereto, and the secretary of state shall issue his certificate to that effect. Such company may, by a majority vote of its directors after such reduction, require the return of the original certificates of stock held by each stockholder in exchange for new certificates it may issue in lieu thereof for such number of shares as each stockholder is entitled to in the proportion that the reduced capital bears to the original.

SOURCES: Codes, 1906, § 2586; Hemingway's 1917, § 5050; 1930, § 5155; 1942, § 5665.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 108.

CJS. 44 C.J.S., Insurance § 149.

§ 83-19-65. Dividends.

No stock company shall make a dividend, either in cash or stock certificates, except from its actual net surplus computed as required by law in its annual statements. Nor shall any company which has ceased to do new business of insurance divide any portion of its assets, except surplus, to its stockholders until it shall have performed or cancelled its policy obligations.

SOURCES: Codes, 1892, § 2335; 1906, § 2587; Hemingway's 1917, § 5051; 1930, § 5156; 1942, § 5666.

Cross References — Restrictions on payment of extraordinary dividends by registered insurers, see § 83-6-25.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 114.

CJS. 44 C.J.S., Insurance §§ 162-165.

§ 83-19-67. Regulation of management contracts.

Any management contract between a domestic insurer and another person, as defined in Section 83-6-1(f), shall be filed and subject to review and final approval of the State Insurance Department.

SOURCES: Codes, 1942, § 5657.3; Laws, 1958, ch. 436, § 4; Laws, 1999, ch. 314, § 1, eff from and after July 1, 1999.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

§ 83-19-69. Certain contracts prohibited in another state.

Subject to the exceptions set forth herein, no domestic insurer shall enter into a contract of insurance upon the life or person of a resident of any other state, or covering property or risks located in any other state, unless such insurer is authorized pursuant to the laws of such other state to do business therein.

The following constitute the exceptions to the foregoing provisions of this section:

(a) Life insurance contracts entered into where the prospective insurant is personally present in a state in which the insurer is authorized to do business when he signs the application.

(b) Issuance of certificates under any lawfully transacted group life, group accident, group health, or other group disability policy, where the master policy is entered into in a state in which the insurer is authorized to do business.

(c) Contracts made pursuant to a pension or retirement plan of an employer, when such contracts are applied for in a state where the employer is personally present or doing business and the insurer is authorized to do business.

(d) The renewal, reinstatement, conversion, or continuance in force with or without modification of contracts otherwise lawfully entered into and which were not originally executed in violation of this section, where the terms of such policy as originally executed leave no option as to renewal, reinstatement, or continuance in force to the insurer, but vest such rights in the insured alone.

(e) Reinsurance contracts entered into upon request from companies in other states covering risks in other states, provided such companies requesting reinsurance are licensed in the states in which the risks are located.

Any company wilfully violating this section shall be subject to suspension of its license to do business in this state for a period of not more than one (1) year, after ten (10) days' notice in writing and hearing by the commissioner of insurance.

SOURCES: Codes, 1942, § 5670.5; Laws, 1964, ch. 475, §§ 1, 2, eff from and after passage (approved June 11, 1964).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 65.

§ 83-19-71. Repealed.

Repealed by Laws, 1991, ch. 501, § 6, eff from and after July 1, 1991.

[Codes, 1930, § 5158; 1942, § 5668; Laws, 1926, ch. 262; Laws, 1930, ch. 211; Laws, 1940, ch. 205; Laws, 1952, ch. 298; Laws, 1958, ch. 440; Laws, 1962, ch. 459]

Editor's Note — For current provisions applicable to reinsurance, see §§ 83-19-151 et seq.

§ 83-19-73. Repealed.

Repealed by Laws, 1998, ch. 323, § 9, eff from and after July 1, 1998.

[Codes, 1942, § 5670.1; Laws, 1958, ch. 452, § 1; Laws, 1962, ch. 461, §§ 1-3; Laws, 1976, ch. 402, § 2; Laws, 1987, ch. 365; Laws, 1997, ch. 410, § 15, eff from and after July 1, 1997]

Editor's Note — Former Section 83-19-73 provided a schedule of minimum capital surplus requirements to be maintained by domestic stock, insurance companies and associations doing business in Mississippi. See now § 83-19-31.

§ 83-19-75. Penalty for failure to report impairment of surplus.

If the surplus of any domestic insurance company or association shall be impaired, as provided in Sections 83-19-75 and 83-19-77, and such impairment shall not be reported to the Commissioner of Insurance of this state within ten (10) days after such impairment occurs or results, the executive officers, secretary, treasurer, and directors of such company shall each be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court.

SOURCES: Codes, 1942, § 5670.2; Laws, 1958, ch. 452, § 2; Laws, 2001, ch. 379, § 2, eff from and after July 1, 2001.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 69.

CJS. 44 C.J.S., Insurance § 139.

§ 83-19-77. Exceptions to surplus requirements.

Sections 83-19-75 and 83-19-77 shall not be construed as applicable to fraternal, benevolent, or burial associations, or any other organization not specifically named in the foregoing schedule.

SOURCES: Codes, 1942, § 5670.4; Laws, 1958, ch. 452, § 4; Laws, 2001, ch. 379, § 3, eff from and after July 1, 2001.

Cross References — Regulation of fraternal societies, see §§ 83-29-1 et seq.
Regulation of burial associations, see §§ 83-37-1 et seq.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 142, 143 et seq.

CJS. 44 C.J.S., Insurance §§ 162-165, 176.

§ 83-19-79. "Equity security" defined.

The term "equity security" when used in Sections 83-19-79 through 83-19-97 means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner of insurance shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

SOURCES: Codes, 1942, § 5670.7-08; Laws, 1966, ch. 528, § 8, eff from and after passage (approved March 17, 1966).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 108.

CJS. 44 C.J.S., Insurance § 149.

§ 83-19-81. Statements of ownership of equity securities.

Every person who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner of insurance within ten (10) days after he becomes such beneficial owner, director, or officer, a statement in such form as the commissioner of insurance may prescribe of the amount of all equity securities of such company of which he is the beneficial owner; and within ten

(10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the commissioner of insurance a statement in such form as the commissioner of insurance may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

SOURCES: Codes, 1942, § 5670.7-01; Laws, 1966, ch. 528, § 1, eff from and after passage (approved March 17, 1966).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 109.

CJS. 44 C.J.S., Insurance § 152.

§ 83-19-83. Recovery of profit realized from certain purchase or sale of equity security.

For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company, if the company shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two (2) years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not beneficial owner both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner of insurance by rules and regulations may exempt as not comprehended within the purpose of this section.

SOURCES: Codes, 1942, § 5670.7-02; Laws, 1966, ch. 528, § 2, eff from and after passage (approved March 17, 1966).

Cross References — Certain purchases and sales excepted from application of provisions of this section, see § 83-19-87.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 109.

CJS. 44 C.J.S., Insurance § 152.

§ 83-19-85. Prohibition of certain sales of equity security.

It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation. No person shall be deemed to have violated this section if he proves that, notwithstanding the exercise of good faith, he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

SOURCES: Codes, 1942, § 5670.7-03; Laws, 1966, ch. 528, § 3, eff from and after passage (approved March 17, 1966).

Cross References — Certain sales excepted from application of provisions of this section, see § 83-19-87.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 109.

CJS. 44 C.J.S., Insurance § 152.

§ 83-19-87. Certain purchases or sales of equity securities excepted.

The provisions of Section 83-19-83 shall not apply to any purchase and sale, or sale and purchase, and the provisions of Section 83-19-85 shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner of insurance may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

SOURCES: Codes, 1942, § 5670.7-04; Laws, 1966, ch. 528, § 4, eff from and after passage (approved March 17, 1966).

Federal Aspects — The Securities Exchange Act of 1934, see 15 USCS §§ 78a et seq.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 105, 106.

CJS. 44 C.J.S., Insurance §§ 153-156.

§ 83-19-89. Certain arbitrage transactions excluded.

The provisions of Sections 83-19-81 through 83-19-85 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner of insurance may adopt in order to carry out the purposes of Sections 83-19-79 through 83-19-97.

SOURCES: Codes, 1942, § 5670.7-05; Laws, 1966, ch. 528, § 5, eff from and after passage (approved March 17, 1966).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 105, 106.

CJS. 44 C.J.S., Insurance §§ 153-156.

§ 83-19-91. Solicitation of proxies, consents, or authorizations.

It shall be unlawful for any person, in contravention of such rules and regulations as the commissioner of insurance may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any equity security of a domestic stock insurance company.

SOURCES: Codes, 1942, § 5670.7-06; Laws, 1966, ch. 528, § 6, eff from and after passage (approved March 17, 1966).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 63.

§ 83-19-93. Transmission of security information.

Unless proxies, consents, or authorizations in respect of an equity security of a domestic stock insurance company are solicited by or on behalf of the management of such company from the holders of record of such security in accordance with the rules and regulations prescribed under Section 83-19-91 prior to any annual or other meeting of the holders of such security, such company shall, in accordance with such rules and regulations as the commissioner of insurance may prescribe as necessary or appropriate in the public interest or for the protection of investors, if required thereby, file with the commissioner of insurance and transmit to all holders of record of such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.

SOURCES: Codes, 1942, § 5670.7-07; Laws, 1966, ch. 528, § 7, eff from and after passage (approved March 17, 1966).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 70.

CJS. 44 C.J.S., Insurance § 96.

§ 83-19-95. Provisions inapplicable to certain equity securities.

The provisions of Sections 83-19-81, 83-19-83, 83-19-85, 83-19-91, and 83-19-93 shall not apply to equity securities of a domestic stock insurance company if (a) such securities shall be registered, or shall be required to be registered, pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, or if (b) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred (100) or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of the cited sections except for the provisions of this subsection (b).

SOURCES: Codes, 1942, § 5670.7-09; Laws, 1966, ch. 528, § 9, eff from and after passage (approved March 17, 1966).

Federal Aspects — Section 12 of the Securities Exchange Act of 1934 is codified as 15 USCS § 78*l*.

§ 83-19-97. Commissioner to make rules and regulations.

The commissioner of insurance shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him by Sections 83-19-81 through 83-19-93, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of Sections 83-19-81, 83-19-83, 83-19-85, 83-19-91, and 83-19-93 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner of insurance, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

SOURCES: Codes, 1942, § 5670.7-10; Laws, 1966, ch. 528, § 10, eff from and after passage (approved March 17, 1966).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 67.

MERGER OR CONSOLIDATION, OR EXCHANGE OF OUTSTANDING STOCK, OF DOMESTIC STOCK COMPANIES

Sec.

83-19-99. Authorization.

83-19-101. Directors' resolution and plan.

83-19-103. Submission of plan to commissioner of insurance.

83-19-105. Public hearing on plan.

83-19-107. Commissioner's order.

83-19-109. Appeals from commissioner's decision.

83-19-111. Stockholder approval of plan.

83-19-113. Procedure where foreign corporation is involved.

83-19-115. Execution and filing of articles or agreement of exchange.

83-19-117. When stockholders' vote unnecessary.

83-19-119. Effect of merger or consolidation; when plan of exchange becomes effective; stock certificates.

83-19-121. Rights of dissenters.

83-19-123. Construction and effect of Sections 83-19-99 through 83-19-123.

§ 83-19-99. Authorization.

A domestic stock insurance company (referred to in Sections 83-19-99 through 83-19-123 as the "domestic company") may effect:

(a) A merger or consolidation with one or more domestic stock insurance companies, or with one or more foreign stock insurance companies, if such merger or consolidation is authorized by the laws of the state under which each such foreign company is organized; or

(b) An exchange of all the outstanding stock of its shareholders with a domestic stock corporation, or with a foreign stock corporation authorized to do business in this state, if such exchange is authorized by the laws of the state under which such foreign corporation is organized (such domestic or foreign corporation being referred to in Sections 83-19-99 through 83-19-123 as the "acquiring corporation"), which acquiring corporation pays or provides the following consideration: (1) shares of stock or other securities issued by such acquiring corporation; (2) cash; (3) other consideration; (4) any combination of such stock or other securities, cash or other consideration, by complying with the provisions of said sections.

Sections 83-19-99 through 83-19-123 shall be supplemental to the general laws of this state governing corporations but in the event there exists any conflict between the provisions of said sections and the provisions of the general laws governing corporations, the provisions of Sections 83-19-99 through 83-19-123 shall be controlling.

SOURCES: Codes, 1942, § 5670.7-21; Laws, 1972, ch. 419, § 1, eff from and after passage (approved April 27, 1972).

Cross References — Domestic mutual insurance company merger with foreign mutual insurance company, see § 83-31-47.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

CJS. 44 C.J.S., Insurance §§ 177 et seq.

§ 83-19-101. Directors' resolution and plan.

The constituent insurance companies may adopt a plan of merger or consolidation, or the domestic insurance company and the acquiring corporation may adopt a plan of exchange of stock in the manner hereinafter set out.

The board of directors of each such corporation shall adopt a resolution approved by a majority of the whole board setting forth the proposed plan of merger, consolidation or exchange and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. The plan shall set forth:

(a) The name of each corporation which is a party to the plan and, if the name of any of them has been changed, the name under which it was formed; and the name of the surviving corporation or the name, or the method of determining it, of the consolidated corporation;

(b) The terms and conditions of the proposed merger, consolidation, or exchange of stock;

(c) The manner and basis of carrying such merger, consolidation, or exchange into effect; or

(d) In the case of a merger, a statement of any amendments or changes in the charter of the surviving corporation to be effected by such merger; in the case of a consolidation, all statements required to be included in the charter for a new corporation formed pursuant to the general laws of this state governing corporations.

No director, officer, agent or employee of any such corporation, shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting in the adoption or approval of such plan except as specifically set forth therein.

SOURCES: Codes, 1942, § 5670.7-22; Laws, 1972, ch. 419, § 2, eff from and after passage (approved April 27, 1972).

§ 83-19-103. Submission of plan to commissioner of insurance.

The constituent corporations in the case of a merger or consolidation, or the domestic company and the acquiring corporation in the case of an exchange of stock, shall then submit to the commissioner of insurance three (3) copies of the proposed plan certified by the president or a vice president of each as having been adopted by its board of directors in accordance with section 83-19-101, together with (a) financial statements of the constituent corporations, or of the domestic company and the acquiring corporation for its last preceding fiscal year; (b) pro forma financial statements of each such corporation based on the assumption that the plan was effective as proposed at the end of the last preceding fiscal year of the domestic company; (c) an estimate of expenses already incurred and of expenses expected to be incurred in connection with the proposed plan; (d) a written statement which sets forth for each such corporation the proposed changes, if any, in management policies and in the identity of its officers and directors, which are initially contemplated should the plan be effected as proposed; and (e) any other information which the commissioner may require with respect to such plan.

SOURCES: Codes, 1942, § 5670.7-22; Laws, 1972, ch. 419, § 2, eff from and after passage (approved April 27, 1972).

§ 83-19-105. Public hearing on plan.

The commissioner of insurance shall hold a public hearing upon the terms, conditions and provisions of the proposed plan of merger, consolidation or exchange to determine if it is reasonable, fair and in the public interest. At such hearing the shareholders and the policyholders of each such corporation, and any other interested parties, shall have the right to appear and to become parties to the proceeding.

Such hearing shall be commenced not less than thirty (30) days after the date on which such plan is submitted to the commissioner. The hearing shall be held at such place, date and time as the commissioner shall specify. Notice of the hearing shall be published in a newspaper having general circulation in the city or cities wherein are located the principal office of each corporation which is a party to the plan once a week for two (2) successive weeks, the last publication of such notice to be not more than two (2) weeks prior to the hearing date. Written notice of the hearing shall be mailed at least ten (10) days prior to the hearing by each such corporation to each of their respective shareholders. All expenses of publication shall be borne as specified in the plan.

SOURCES: Codes, 1942, § 5670.7-22; Laws, 1972, ch. 419, § 2, eff from and after passage (approved April 27, 1972).

§ 83-19-107. Commissioner's order.

The commissioner of insurance shall issue a written order approving the plan as submitted to him, including such modifications therein as a majority of the whole board of directors of each corporation which is a party to the plan shall approve, if he finds (a) that the plan, including all such modifications, if effected, will not tend to affect adversely the financial stability, management, general capacity, or intention to continue the safe and prudent transaction of insurance business of any domestic insurance company which is a party to the plan; (b) that the fulfillment of the plan will not affect either the contractual obligations of any domestic insurance company which is a party to the plan to its policyholders, or the ability and tendency of such company to render service to its policyholders in the future; and (c) that the terms and conditions of the plan are consistent with law and are fair and reasonable.

The order of the commissioner approving or disapproving the plan shall be filed within sixty (60) days after the date the plan is submitted to him. The commissioner shall give notice of such order to all parties to the proceeding and shall deliver copies thereof to each corporation which is a party to the plan.

SOURCES: Codes, 1942, § 5670.7-22; Laws, 1972, ch. 419, § 2, eff from and after passage (approved April 27, 1972).

§ 83-19-109. Appeals from commissioner's decision.

Any person becoming a party as hereinbefore provided and feeling aggrieved by the decision of the commissioner of insurance under the provisions of Sections 83-19-99 through 83-19-123 may appeal therefrom within thirty (30) days after the receipt of notice thereof to the Chancery Court of the First Judicial District of Hinds County by writ of certiorari upon giving bond with surety or sureties in such penalty as shall be approved by the chancery court of said county, conditioned that such appellant will pay all costs of the appeal in the event such appeal is unsuccessful. The said chancery court shall have the authority and jurisdiction to hear said appeal and to render its decision in regard thereto either in term time or vacation.

SOURCES: Codes, 1942, § 5670.7-22; Laws, 1972, ch. 419, § 2, eff from and after passage (approved April 27, 1972).

§ 83-19-111. Stockholder approval of plan.

The plan as approved by the commissioner of insurance shall then be submitted to a vote of the shareholders of each corporation which is a party to such plan at an annual or special meeting of such shareholders. Written notice of such meeting shall be given for the time and in the manner required by the general laws of this state governing corporate mergers. The written notice shall state the right of a shareholder to dissent and receive fair value for his shares, and shall contain a copy or summary of the plan of merger, consolidation, or exchange. The plan shall be approved upon receiving the affirmative votes of the holders of at least two-thirds (⅔) of the outstanding shares of capital stock of each such corporation, or of such larger proportion of shares as may be specified in the plan. Notwithstanding such approval and at any time prior to the effective date of the plan as provided in Section 83-19-119, it may be abandoned pursuant to provisions therefor, if any, set forth in the plan.

SOURCES: Codes, 1942, § 5670.7-22; Laws, 1972, ch. 419, § 2, eff from and after passage (approved April 27, 1972).

§ 83-19-113. Procedure where foreign corporation is involved.

If one (1) of the constituent corporations to a merger or consolidation is a foreign corporation, such merger or consolidation shall be carried out in the following manner: (a) each domestic corporation shall comply with the provisions of Sections 83-19-99 through 83-19-123 with respect to the merger or consolidation of domestic companies, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized; (b) if the surviving or new corporation is to be governed by the laws of any state other than this state, it shall comply with the general laws of this state governing foreign corporations if it is to transact business or to conduct affairs in this state, and in every case it shall file with the secretary of state of this state an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or consolidated corporation, and an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding and an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under Section 83-19-123.

The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of the state governing such surviving or consolidated company provide otherwise.

In the case of an exchange of securities, if the acquiring corporation is a foreign corporation, then such corporation shall comply with the applicable provisions of the laws of the state under which it is organized. Such foreign acquiring corporation shall also procure a certificate of authority to transact business and conduct affairs in Mississippi and shall comply with all the provisions of the law of this state relating to foreign corporations. The effect of such exchange of securities shall be as provided by Sections 83-19-99 through 83-19-123 except insofar as the laws of the state under which such foreign acquiring corporation is organized provide otherwise.

SOURCES: Codes, 1942, § 5670.7-22; Laws, 1972, ch. 419, § 2, eff from and after passage (approved April 27, 1972).

§ 83-19-115. Execution and filing of articles or agreement of exchange.

(1) After the plan of merger or consolidation shall have been approved by the shareholders of each constituent corporation, appropriate articles of merger or consolidation shall be executed by the president or any vice president and the secretary or any assistant secretary of each such corporation and filed in triplicate with the commissioner of insurance. If such articles of

merger or consolidation show that the plan of merger or consolidation has been duly approved by the shareholders of each constituent corporation as required in Section 83-19-111 and otherwise conforms to the law, the commissioner shall endorse his approval on each copy of said articles, shall record one (1) copy in his office, and shall return the other two (2) copies to the domestic company for delivery to the secretary of state who will approve said merger or consolidation as provided by the general laws of this state governing corporations. Following that the certificate of merger or certificate of consolidation will be recorded in the office of the chancery clerk and published as required by the general laws of this state governing corporation.

(2) After the plan of exchange of stock shall have been approved by the shareholders of the domestic company and the acquiring corporation, an appropriate agreement of exchange shall be executed by the president or any vice president and the secretary or any assistant secretary of each such corporation and filed in triplicate with the commissioner of insurance. If such agreement shows that the plan of exchange has been duly approved by the shareholders of the domestic company and the acquiring corporation as required by Section 83-19-111 and otherwise conforms to the law, the commissioner shall endorse his approval on each copy thereof, shall record one (1) copy in his office, and shall return one (1) copy each to the domestic company and to the acquiring corporation.

SOURCES: Codes, 1942, § 5670.7-23; Laws, 1972, ch. 419, § 3, eff from and after passage (approved April 27, 1972).

§ 83-19-117. When stockholders' vote unnecessary.

If the domestic company owns at least ninety-five percent (95%) of the outstanding shares of another domestic or foreign stock insurance company, it may merge such other company into itself without approval by a vote of the shareholders of either company in accordance with the general laws of this state governing merger of subsidiary corporations. In such event, the approval of the commissioner of insurance shall be obtained in the manner specified in Sections 83-19-103 through 83-19-107.

SOURCES: Codes, 1942, § 5670.7-24; Laws, 1972, ch. 419, § 4, eff from and after passage (approved April 27, 1972).

§ 83-19-119. Effect of merger or consolidation; when plan of exchange becomes effective; stock certificates.

(1) The effect of the merger or consolidation shall be as provided in Section 79-4-11.06.

(2) The plan of exchange and the issuance and exchange of securities provided for therein shall become effective when the agreement of exchange has been recorded by the commissioner, or upon such later date as may be specified in such agreement, which may not be later than thirty (30) days after such recording. Upon the plan of exchange becoming effective, the issuance

and exchange of securities provided for therein shall be deemed to have been consummated, each shareholder of the domestic company shall cease to be a shareholder of such company and the ownership of all shares of the issued and outstanding stock of the domestic company shall vest in the acquiring corporation automatically without any physical transfer or deposit of certificates representing such shares.

Certificates representing shares of stock of the domestic company prior to the plan of exchange becoming effective shall, after the plan of exchange becomes effective, represent (a) shares of the issued and outstanding capital stock or other securities issued by the acquiring corporation; and (b) the right, if any, to receive such cash or other consideration upon such terms as shall be specified in the plan of exchange. Such certificates representing shares of stock of the domestic company may, after the plan of exchange becomes effective, be exchanged for shares of stock or other securities issued by the acquiring corporation or cash or other consideration or any combination thereof upon such terms as shall be specified in the plan of exchange.

SOURCES: Codes, 1942, § 5670.7-25; Laws, 1972, ch. 419, § 5; Laws, 1997, ch. 410, § 17, eff from and after July 1, 1997.

§ 83-19-121. Rights of dissenters.

Any shareholder of any domestic stock insurance company which is a party to a merger, consolidation or exchange of securities as described in Sections 83-19-99 through 83-19-123 shall have the right to dissent and receive fair value for his shares by complying with the procedure set forth in Section 79-3-161, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 5670.7-27; Laws, 1972, ch. 419, § 7, eff from and after passage (approved April 27, 1972).

Editor's Note — Section 79-4-161, referred to in this section, was repealed by Laws of 1987, ch. 486, § 17.06, effective January 1, 1988. For provisions governing dissenters' rights, see §§ 79-4-13.01 et seq.

RESEARCH REFERENCES

ALR. Timeliness and sufficiency of dissenting stockholder's notice of his objection to consolidation or merger and of his demand for payment for his shares. 40 A.L.R.3d 260.

§ 83-19-123. Construction and effect of Sections 83-19-99 through 83-19-123.

Nothing contained in Sections 83-19-99 through 83-19-123 shall affect the power of the commissioner of insurance to regulate, supervise and control insurance companies to the extent of and as provided by Title 83, Mississippi Code of 1972. Nothing contained in Sections 83-19-99 through 83-19-123 shall be construed to authorize any insurance company to engage in any kinds of insurance business not authorized by its charter or to authorize any acquiring corporation which is not an insurance company to engage directly in the business of insurance. Subsequent to the effective date of any plan of exchange, the commissioner of insurance, having regard to the findings stated in Section 83-19-107, shall have authority to require that the affairs of the domestic company be conducted in such manner as to assure the continued safe conduct and transaction of the business of insurance of the domestic company.

SOURCES: Codes, 1942, § 5670.7-26; Laws, 1972, ch. 419, § 6, eff from and after passage (approved April 27, 1972).

REGULATION OF REINSURANCE

SEC.	
83-19-151.	Credit for reinsurance; accredited reinsurer defined.
83-19-153.	Reduction from liability for reinsurance ceded by domestic insurer to assuming insurer not meeting requirements.
83-19-155.	Definitions.
83-19-157.	Adoption of rules and regulations.

§ 83-19-151. Credit for reinsurance; accredited reinsurer defined.

Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (a), (b), (c), (d) or (e). If an insurer meets the requirements of paragraph (c) or (d), the requirements of paragraph (f) must also be met.

(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state.

(b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which:

(i) Files with the commissioner evidence of its submission to this state's jurisdiction;

(ii) Submits to this state's authority to examine its books and records;

(iii) Is licensed to transact insurance or reinsurance in at least one (1) state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one (1) state;

(iv) Files annually with the commissioner a copy of its annual statement filed with the Insurance Department of its state of domicile and a copy of its most recent audited financial statement; and either:

(A) Maintains a surplus as regards policyholders in an amount which is not less than Twenty Million Dollars ($20,000,000.00) and whose accreditation has not been denied by the commissioner within ninety (90) days of its submission; or

(B) Maintains a surplus as regards policyholders in an amount less than Twenty Million Dollars ($20,000,000.00) and whose accreditation has been approved by the commissioner.

No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

(c) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer;

(i) Maintains a surplus as regards policyholders in an amount not less than Twenty Million Dollars ($20,000,000.00); and

(ii) Submits to the authority of this state to examine its books and records.

The requirement of paragraph (c)(i) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(d)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in paragraph (b) of Section 83-19-155, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than Twenty Million Dollars ($20,000,000.00). In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which One Hundred Million Dollars ($100,000,000.00) shall be held jointly for the benefit of United States ceding insurers of any member of the group; the incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accounts.

(ii) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in the previous paragraph, and which is under the supervision of the Department of Trade and Industry of the United Kingdom and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of Ten Billion Dollars ($10,000,000,000.00), the trust shall be in an amount equal to the group's several liabilities attributable to business written in the United States, plus the group shall maintain a joint trusteed surplus of which One Hundred Million Dollars ($100,000,000.00) shall be held jointly for the benefit of United States ceding insurers of any member of the group, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

(iii) Such trust shall be established in a form approved by the Commissioner of Insurance. The trust instrument must provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title of its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(iv) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(e) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), (b), (c) or (d) but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

(f) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by paragraphs (c) and (d) shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(i) That if the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give such court jurisdiction, and shall abide by the final decision of such court or of any appellate court in the event of an appeal; and

(ii) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company.

This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

SOURCES: Laws, 1991, ch. 501, § 1; Laws, 1994, ch. 333, § 1, eff from and after passage (approved March 14, 1994).

Editor's Note — Laws of 1991, ch. 501, § 5, provides as follows:
"SECTION 5. Sections 1 through 4 [codified as §§ 83-19-151 through 83-19-157] shall apply to all cessions after July 1, 1991, under reinsurance agreements which have had an inception, anniversary or renewal date not less than six (6) months after such date."

Cross References — Annual reports of reinsurance contracts, see § 83-5-57.

Fire risks, see § 83-13-1.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former § 83-19-71.

1.-5. [Reserved for future use.]

6. Under former § 83-19-71.

A provision in a life insurance policy, issued upon the applicant's statement without examination of the applicant by a physician, that if the insured was not in sound health on the date thereof the insurer's liability should be limited to a return of the premiums received under the policy, could not be construed as meaning a change for the worse in the condition of health from the date of the acceptance of the application to the date of the actual delivery of the policy. National Life & Accident Ins. Co. v. Green, 191 Miss. 581, 2 So. 2d 838, 136 A.L.R. 1510 (1941), error overruled, 191 Miss. 595, 3 So. 2d 812, 136 A.L.R. 1510 (1941).

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

ALR. Reinsurer's liability for primary liability insurer's failure to compromise or settle. 40 A.L.R.4th 1130.

Liability insurance: excess carrier's right of action against primary carrier for improper or inadequate defense of claim. 49 A.L.R.4th 305.

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1809, 1814 et seq.

14A Am. Jur. Pl & Forms (Rev), Insurance, Form No. 1081 (complaint or declaration for recovery on reinsurance policy-by primary insurer against reinsurer); Form No. 1082 (complaint or declaration for recovery on life insurance policy-by widow of insured-against reinsurer who assumed obligation of original insurer).

10 Am. Jur. Legal Forms 2d, Insurance § 149:44.

CJS. 46 C.J.S., Insurance §§ 1720 et seq.

§ 83-19-153. Reduction from liability for reinsurance ceded by domestic insurer to assuming insurer not meeting requirements.

A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 83-19-151 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in paragraph (b) of Section 83-19-155. This security may be in the form of:

(a) Cash;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(c) Clean, irrevocable, unconditional letters of credit, as defined in paragraph (a), issued or confirmed by a qualified United States institution no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(d) Any other form of security acceptable to the commissioner.

SOURCES: Laws, 1991, ch. 501, § 2, eff from and after July 1, 1991.

Editor's Note — Although paragraph (c) of this section refers to "letters of credit, as defined in paragraph (a)," there is no definition of "letters of credit" in Sections 83-19-151 through 83-19-157.

Section 5, ch. 501, Laws of 1991, provides as follows:

"SECTION 5. Sections 1 through 4 [codified as §§ 83-19-151 through 83-19-157] shall apply to all cessions after July 1, 1991, under reinsurance agreements which have had an inception, anniversary or renewal date not less than six (6) months after such date."

§ 83-19-155. Definitions.

(a) For purposes of paragraph (c) of Section 83-19-153, a "qualified United States financial institution" means an institution that:

(i) Is organized or (in the case of a United States office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;

(ii) Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(iii) Has been determined by either the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(b) A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(i) Is organized, or (in the case of a United States branch or agency office of a foreign banking organization) licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(ii) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

SOURCES: Laws, 1991, ch. 501, § 3, eff from and after July 1, 1991.

Editor's Note — Section 5, ch. 501, Laws of 1991, provides as follows:
"SECTION 5. Sections 1 through 4 [codified as §§ 83-19-151 through 83-19-157] shall apply to all cessions after July 1, 1991, under reinsurance agreements which have had an inception, anniversary or renewal date not less than six (6) months after such date."

§ 83-19-157. Adoption of rules and regulations.

The commissioner may adopt rules and regulations implementing the provisions of Sections 83-19-151 through 83-19-157.

SOURCES: Laws, 1991, ch. 501, § 4, eff from and after July 1, 1991.

Editor's Note — Section 5, ch. 501, Laws of 1991, provides as follows:
"SECTION 5. Sections 1 through 4 [codified as §§ 83-19-151 through 83-19-157] shall apply to all cessions after July 1, 1991, under reinsurance agreements which have had an inception, anniversary or renewal date not less than six (6) months after such date."

REINSURANCE INTERMEDIARY ACT

SEC.
83-19-201. Short title.
83-19-203. Definitions.
83-19-205. Persons prohibited from acting as reinsurance intermediary broker; persons prohibited from acting as reinsurance intermediary manager; requirements of reinsurance intermediary managers; reinsurance intermediary license; conditions; grounds for refusal to issue license; exceptions to requirements of section.
83-19-207. Written authorization required for transactions between reinsurance intermediary broker and insurer; minimum contents of authorization.
83-19-209. Records required to be kept by reinsurance intermediary broker; right of insurer to access, copy and audit records.
83-19-211. Required and prohibited acts of insurer with respect to reinsurance intermediary brokers.
83-19-213. Written contract required for transactions between reinsurance intermediary manager and reinsurer; filing of contract; minimum contents of contract.
83-19-215. Prohibited acts of reinsurance intermediary manager.
83-19-217. Required and prohibited acts of reinsurer with respect to reinsurance intermediary managers.
83-19-219. Examination of reinsurance intermediary by commissioner; reinsurance

intermediary manager examined as reinsurer; commissioner to adopt rules and regulations.
83-19-221. Penalties for violations of §§ 83-19-201 through 83-19-221.

§ 83-19-201. Short title.

Sections 83-19-201 through 83-19-221 may be cited as the Reinsurance Intermediary Act.

SOURCES: Laws, 1992, ch. 330, § 1, eff from and after July 1, 1992.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1809-1825.

§ 83-19-203. Definitions.

As used in Sections 83-19-201 through 83-19-221:

(a) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(b) "Controlling person" means any person, firm, association or corporation who directly or indirectly has the power to direct, or cause to be directed, the management, control or activities of the reinsurance intermediary.

(c) "Insurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer.

(d) "Licensed producer" means an agent, broker or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law.

(e) "Reinsurance intermediary" means a reinsurance intermediary broker or a reinsurance intermediary manager as these terms are defined in paragraphs (f) and (g).

(f) "Reinsurance intermediary broker" means any person, other than an officer or employee of the ceding insurer, firm, association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer.

(g) "Reinsurance intermediary manager" means any person, firm, association or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department or underwriting office) and acts as an agent for such reinsurer whether known as a reinsurance intermediary manager, manager or other similar term. Notwithstanding the above, the following persons shall not be considered a reinsurance intermediary manager, with respect to such reinsurer, for the purposes of §§ 83-19-201 through 83-19-221:

(i) An employee of the reinsurer;

(ii) A United States manager of the United States branch of an alien reinsurer;

(iii) An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the Holding Company Act, and whose compensation is not based on the volume of premiums written;

(iv) The manager of a group, association, pool or organization of insurers who engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(h) "Reinsurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer with the authority to assume reinsurance.

(i) "To be in violation" means that the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with Sections 83-19-201 through 83-19-221.

(j) "Qualified United States financial institution" means an institution that:

(i) Is organized or (in the case of a United States office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;

(ii) Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(iii) Has been determined by either the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

SOURCES: Laws, 1992, ch. 330 § 2, eff from and after July 1, 1992.

§ 83-19-205. Persons prohibited from acting as reinsurance intermediary broker; persons prohibited from acting as reinsurance intermediary manager; requirements of reinsurance intermediary managers; reinsurance intermediary license; conditions; grounds for refusal to issue license; exceptions to requirements of section.

(1) No person, firm, association or corporation shall act as a reinsurance intermediary broker in this state if the reinsurance intermediary broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

(a) In this state, unless such reinsurance intermediary broker is a licensed producer in this state; or

(b) In another state, unless such reinsurance intermediary broker is a licensed producer in this state or another state having a law substantially similar to this law or such reinsurance intermediary broker is licensed in this state as a nonresident reinsurance intermediary.

(2) No person, firm, association or corporation shall act as a reinsurance intermediary manager:

(a) For a reinsurer domiciled in this state, unless such reinsurance intermediary manager is a licensed producer in this state;

(b) In this state, if the reinsurance intermediary manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such reinsurance intermediary manager is a licensed producer in this state;

(c) In another state for a nondomestic insurer, unless such reinsurance intermediary manager is a licensed producer in this state or another state having a law substantially similar to this law or such person is licensed in this state as a nonresident reinsurance intermediary.

(3) The commissioner may require a reinsurance intermediary manager subject to subsection (2) to:

(a) File a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(4)(a) The commissioner may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of Sections 83-19-201 through 83-19-221. Any such license issued to a firm or association will authorize all the members of such firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of such corporation, and all such persons shall be named in the application and any supplements thereto.

(b) If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by Sections 83-19-201 through 83-19-221 for designation of service of process upon unauthorized insurers; and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such nonresident reinsurance intermediary may be served. Such licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the commissioner.

(5) The commissioner may refuse to issue a reinsurance intermediary license if, in his judgment, the applicant, anyone named on the application, or any member, principal, officer or director of the applicant, is not trustworthy, or that any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance of such license. Upon written request therefor, the commissioner shall furnish a summary of the basis for refusal to issue a license.

(6) Licensed attorneys at law of this state when acting in their professional capacity as such shall be exempt from this section.

SOURCES: Laws, 1992, ch. 330, § 3, eff from and after July 1, 1992.

Cross References — Insurer not to engage unlicensed reinsurance intermediary broker, see § 83-19-211.

Reinsurer not to engage unlicensed reinsurance intermediary manager, see § 83-19-215.

RESEARCH REFERENCES

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1809-1825.

§ 83-19-207. Written authorization required for transactions between reinsurance intermediary broker and insurer; minimum contents of authorization.

Transactions between a reinsurance intermediary broker and the insurer it represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, contain provisions that:

(a) The insurer may terminate the reinsurance intermediary broker's authority at any time.

(b) The reinsurance intermediary broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the reinsurance intermediary broker, and remit all funds due to the insurer within thirty (30) days of receipt.

(c) All funds collected for the insurer's account shall be held by the reinsurance intermediary broker in a fiduciary capacity in a bank which is a qualified U.S. financial institution as defined herein.

(d) The reinsurance intermediary broker shall comply with Section 83-19-209.

(e) The reinsurance intermediary broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.

(f) The reinsurance intermediary broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

SOURCES: Laws, 1992, ch. 330, § 4, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1809-1825.

§ 83-19-209. Records required to be kept by reinsurance intermediary broker; right of insurer to access, copy and audit records.

(1) For at least ten (10) years after expiration of each contract of reinsurance, the reinsurance intermediary broker shall keep a complete record for each transaction showing:

(a) The type of contract, limits, underwriting restrictions, classes or risks and territory;

(b) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;

(c) Reporting and settlement requirements of balances;

(d) Rate used to compute the reinsurance premium;

(e) Names and addresses of assuming reinsurers;

(f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary broker;

(g) Related correspondence and memoranda;

(h) Proof of placement;

(i) Details regarding retrocessions handled by the reinsurance intermediary broker, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(j) Financial records, including but not limited to, premium and loss accounts; and

(k) When the reinsurance intermediary broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

(2) The insurer shall have access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary broker related to its business in a form usable by the insurer.

SOURCES: Laws, 1992, ch. 330, § 5, eff from and after July 1, 1992.

Cross References — Requirement that reinsurance intermediary broker comply with this section, see § 83-19-207.

§ 83-19-211. Required and prohibited acts of insurer with respect to reinsurance intermediary brokers.

(1) An insurer shall not engage the services of any person, firm, association or corporation to act as a reinsurance intermediary broker on its behalf unless such person is licensed as required by Section 83-19-205.

(2) An insurer may not employ an individual who is employed by a reinsurance intermediary broker with which it transacts business, unless such reinsurance intermediary broker is under common control with the insurer and subject to the Holding Company Act.

(3) The insurer shall obtain annually a copy of statements of the financial condition of each reinsurance intermediary broker with which it transacts business.

SOURCES: Laws, 1992, ch. 330, § 6, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1809-1825.

§ 83-19-213. Written contract required for transactions between reinsurance intermediary manager and reinsurer; filing of contract; minimum contents of contract.

Transactions between a reinsurance intermediary manager and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty (30) days before such reinsurer assumes or cedes business through such producer, a true copy of the approved contract shall be filed with the commissioner for approval. The contract shall, at a minimum, contain provisions that:

(a) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary manager. The reinsurer may suspend the authority of the reinsurance intermediary manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(b) The reinsurance intermediary manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the reinsurance intermediary manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(c) All funds collected for the reinsurer's account will be held by the reinsurance intermediary manager in a fiduciary capacity in a bank which is a qualified United States financial institution as defined herein. The reinsurance intermediary manager may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary manager shall maintain a separate bank account for each reinsurer that it represents.

(d) For at least ten (10) years after expiration of each contract of reinsurance, the reinsurance intermediary manager shall keep a complete record for each transaction showing:

(i) The type of contract, limits, underwriting restrictions, classes or risks and territory;

(ii) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(iii) Reporting and settlement requirements of balances;

(iv) Rate used to compute the reinsurance premium;

(v) Names and addresses of reinsurers;

(vi) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary manager;

(vii) Related correspondence and memoranda;

(viii) Proof of placement;

(ix) Details regarding retrocessions handled by the reinsurance intermediary manager, as permitted by Section 83-19-217, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(x) Financial records, including but not limited to, premium and loss accounts; and

(xi) When the reinsurance intermediary manager places a reinsurance contract on behalf of a ceding insurer:

(A) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(B) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

(e) The reinsurer will have access and the right to copy all accounts and records maintained by the reinsurance intermediary manager related to its business in a form usable by the reinsurer.

(f) The contract cannot be assigned in whole or in part by the reinsurance intermediary manager.

(g) The reinsurance intermediary manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.

(h) Sets forth the rates, terms and purposes of commissions, charges and other fees which the reinsurance intermediary manager may levy against the reinsurer.

(i) If the contract permits the reinsurance intermediary manager to settle claims on behalf of the reinsurer:

(i) All claims will be reported to the reinsurer in a timely manner;

(ii) A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(A) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(B) Involves a coverage dispute;

(C) May exceed the reinsurance intermediary manager's claims settlement authority;

(D) Is open for more than six (6) months; or

(E) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

(iii) All claim files shall be the joint property of the reinsurer and reinsurance intermediary manager. However, upon an order of liquidation of the reinsurer such files shall become the sole property of the reinsurer or its estate; the reinsurance intermediary manager shall have reasonable access to and the right to copy the files on a timely basis;

(iv) Any settlement authority granted to the reinsurance intermediary manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(j) If the contract provides for a sharing of interim profits by the reinsurance intermediary manager that such interim profits shall not be paid until one (1) year after the end of each underwriting period for property business and five (5) years after the end of each underwriting period for casualty business or a later period set by the commissioner for specified lines of insurance and not until the adequacy of reserves on remaining claims has been verified pursuant to Section 83-19-217(3).

(k) The reinsurance intermediary manager annually shall provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(*l*) The reinsurer shall periodically (at least semiannually) conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary manager.

(m) The reinsurance intermediary manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to this contract.

(n) The acts of the reinsurance intermediary manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

SOURCES: Laws, 1992, ch. 330, § 7, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1809-1825.

§ 83-19-215. Prohibited acts of reinsurance intermediary manager.

The reinsurance intermediary manager shall not:

(a) Bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. Such guidelines shall include a list of reinsurers with which such automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(b) Commit the reinsurer to participate in reinsurance syndicates.

(c) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed.

(d) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent (1%) of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.

(e) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(f) Jointly employ an individual who is employed by the reinsurer.

(g) Appoint a sub-reinsurance intermediary manager.

SOURCES: Laws, 1992, ch. 330, § 8, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1809-1825.

§ 83-19-217. Required and prohibited acts of reinsurer with respect to reinsurance intermediary managers.

(1) A reinsurer shall not engage the services of any person, firm, association or corporation to act as a reinsurance intermediary manager on its behalf unless such person is licensed as required by Section 83-19-205.

(2) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary manager which such reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the commissioner.

(3) If a reinsurance intermediary manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary manager. This opinion shall be in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary manager.

(5) Within thirty (30) days of termination of a contract with a reinsurance intermediary manager, the reinsurer shall provide written notification of such termination to the commissioner.

(6) A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its reinsurance intermediary manager. This subsection shall not apply to relationships governed by the Holding Company Act or, if applicable, the Broker Controlled Insurer Act.

SOURCES: Laws, 1992, ch. 330, § 9, eff from and after July 1, 1992.

Cross References — Application of this section to payment of interim profits to reinsurance intermediary manager, see § 83-19-213.

RESEARCH REFERENCES

Am Jur. 44A Am. Jur. 2d, Insurance §§ 1809-1825.

§ 83-19-219. Examination of reinsurance intermediary by commissioner; reinsurance intermediary manager examined as reinsurer; commissioner to adopt rules and regulations.

(1) A reinsurance intermediary shall be subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the commissioner.

(2) A reinsurance intermediary manager may be examined as if it were the reinsurer.

(3) The commissioner may adopt reasonable rules and regulations for the implementation and administration of Sections 83-19-201 through 83-19-221.

SOURCES: Laws, 1992, ch. 330, § 10, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 44A Am. Jur. 2d Insurance §§ 1809, 1814-1824.

§ 83-19-221. Penalties for violations of §§ 83-19-201 through 83-19-221.

(1) A reinsurance intermediary, insurer or reinsurer found by the commissioner, after a hearing conducted in accordance with Section 83-6-39, to be in violation of any provision(s) of Sections 83-19-201 through 83-19-221, shall:

(a) For each separate violation, pay a penalty in an amount not exceeding Five Thousand Dollars ($5,000.00);

(b) Be subject to revocation or suspension of its license; and

(c) If a violation was committed by the reinsurance intermediary, such reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

(2) The decision, determination or order of the commissioner pursuant to subsection (1) shall be subject to judicial review pursuant to Section 83-6-41.

(3) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided in the insurance law.

(4) Nothing contained in Sections 83-19-201 through 83-19-221 is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.

SOURCES: Laws, 1992, ch. 330, § 11, eff from and after July 1, 1992.

CHAPTER 20

Domicile Change for Domestic and Foreign Insurers

Sec.
83-20-1. Foreign insurer becoming domestic insurer.
83-20-3. Transfer of domicile by domestic insurer.
83-20-5. Continuation of certificate of authority and other approvals.
83-20-7. Promulgation of rules and regulations by Commissioner of Insurance.

§ 83-20-1. Foreign insurer becoming domestic insurer.

Any insurer which is organized under the laws of any other state and is admitted to do business in this state for the purpose of writing insurance may become a domestic insurer by complying with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business at a place in this state. Such domestic insurer shall be entitled to like certificates and licenses to transact business in this state, and shall be subject to the authority and jurisdiction of this state.

SOURCES: Laws, 1989, ch. 352, § 1, eff from and after July 1, 1989.

RESEARCH REFERENCES

Practice References. Thomas, Jeffrey E., Martinez, Leo P., Mayerson, Marc S., and Richmond, Douglas R., 2011 Edition of New Appleman Insurance Law Practice Guide.

§ 83-20-3. Transfer of domicile by domestic insurer.

Any domestic insurer may, upon the approval of the Commissioner of Insurance, transfer its domicile to any other state in which it is admitted to transact the business of insurance, and upon such a transfer shall cease to be a domestic insurer, and shall be admitted to this state if qualified as a foreign insurer. The Commissioner of Insurance shall approve any such proposed transfer unless he shall determine such transfer is not in the interest of the policyholders of this state.

SOURCES: Laws, 1989, ch. 352, § 2, eff from and after July 1, 1989.

§ 83-20-5. Continuation of certificate of authority and other approvals.

The certificate of authority, agents' appointments and licenses, rates, and other items which the Commissioner of Insurance allows, in his discretion, which are in existence at the time any insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation or any other lawful method shall continue in full force and effect upon such transfer if such insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the Commissioner of Insurance. Every transferring insurer shall file new policy forms with the Commissioner of Insurance on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the Commissioner of Insurance. However, every such transferring insurer shall notify the Commissioner of Insurance of the details of the proposed transfer, and shall file promptly, any resulting amendments to corporate documents filed or required to be filed with the Commissioner of Insurance.

SOURCES: Laws, 1989, ch. 352, § 3, eff from and after July 1, 1989.

§ 83-20-7. Promulgation of rules and regulations by Commissioner of Insurance.

The Commissioner of Insurance is hereby authorized to promulgate any rules and regulations in order to carry out the purposes of this chapter.

SOURCES: Laws, 1989, ch. 352, § 4, eff from and after July 1, 1989.

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A

ACCELERATED LIFE INSURANCE BENEFITS, §§83-7-101 to 83-7-119.

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